TREATISE

The Principal 3075 Grounds and Maxims

La A W S This Nation.

Very useful and commodious for all Students, and such others as defire the knowledge and understanding of the Laws.

Written by that most excellent and Learned Expositor of the Law, W. Noy, of Lincolns Inn, Esquire.

Lex plus laudatur quando ratione probator.

The Fourth Edition.

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By the Honou ed, WILL Attorney Ge ry Council

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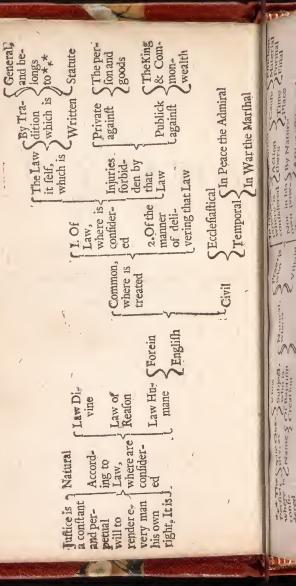
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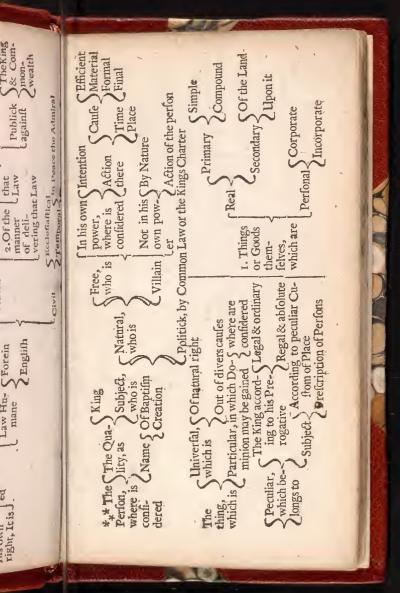
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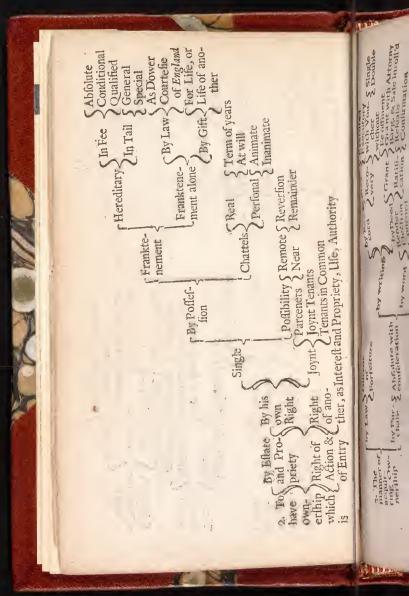
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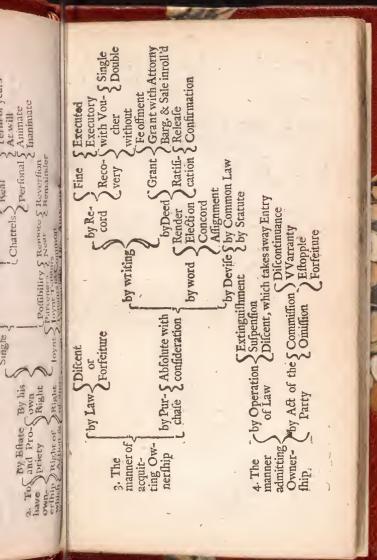
By the Honourable and most Learned, WILLIAM NOY, Esq. Attorney General, and of the Privy Council to King Charles I.

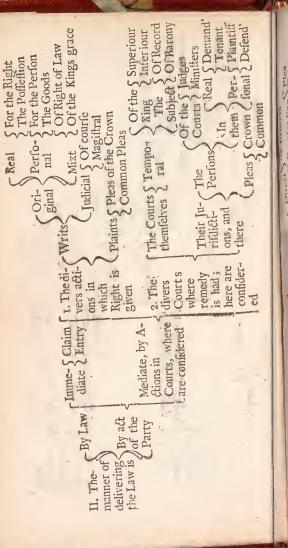
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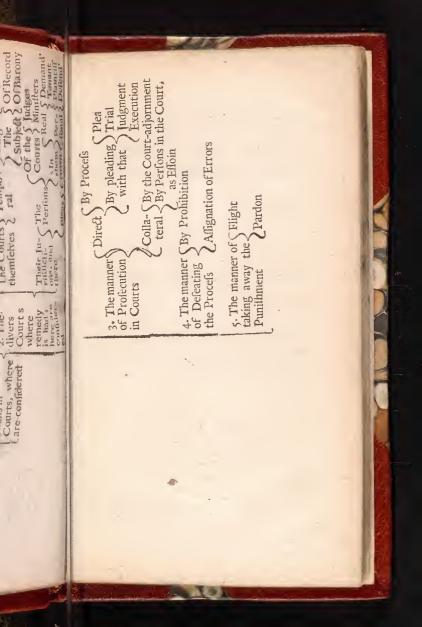


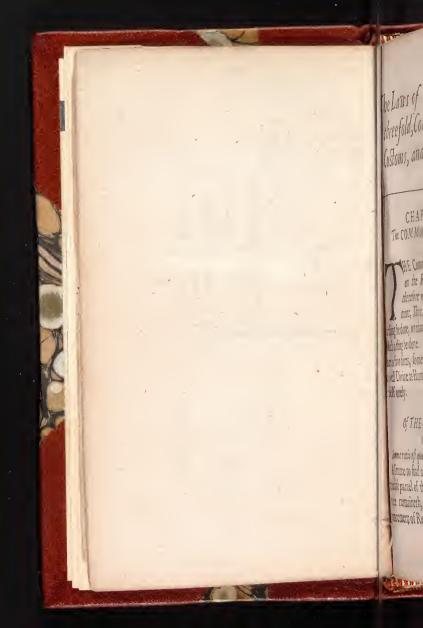






17. The manner of the control of the





The Laws of England are threefold, Common Laws, Customs, and Statutes.

CHAP. I. The COMMON LAW.

HE Common Law is grounded on the Rules of Reason, and therefore we use to say in Argument, That Reason will that such thing be done, or that Reason will not that ich a thing be done. The Rules of Reason re of two forts, fome taken from Learning s well Divine as Human, and some proper to : felf onely.

Of THEOLOGY.

Summa ratio est que pro Religione facit.

A Tenure to find a Preacher, if the Lord urchase parcel of the Land, yet the whole rvice remaineth, because it is for the addvancement of Religion.

Of Grammar. Of Logick.

Dies Dominicus nonest Juridicus. Sale on a Sunday shall not be said Sale in a market, to alter the property of the Goods.

Of GRAMMAR.

Of Grammar the Rules are infinite in the Etymology of a Word, and in the construction thereof what is nature is fingle.

Ad proximum antecedens fiat relatio, nift m, a Oulant! impediatur sententia.

As an Indiament against J. S. servant to 7.D. in the County of Midd. Butcher, &c. is not good; for Servant is no addition, and Butcher shall be referred to J. D. which is with the Process the next antecedent.

Of LOGICK.

Cossante caus à cessat effectus.

The Executor, nor the husband, after the death of a woman guardian in Soccage, shall not have the wardship, because (viz.) the natural affection is removed which was the cause thereof.

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The Executor obate of the Wil reit is by the Will

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is of the offence,

According to th As if a Servant, w rice, kill his Ma lich he bare him is Petty Treasor

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Some things shall be construed according furidicus. to the original cause thereof.

> The Executor may release before the Probate of the Will, because his title and inerest is by the Will, and not by the Probate.

To make a man fwear to bring me money in the confir apon pain of killing, and he bringeth it ac-

cordingly, is Felony.

Outlawry in Trespass is no forfeiture of ns fiat relation Land, as Outlawry in Felony is; for although he non-appearance is the cause of the Out-It J. S. ferrant awry in both, yet the force of the Outlawry Aidd. Butter, hall be esteemed according to the heinousis no addition, let's of the offence, which is the principal to J. D. who ause of the Process.

According to the beginning thereof.

As if a Servant, which is out of his Masters ervice, kill his Master, through the malice which he bare him when he was his Servant, his is Petty Treason.

According to the end thereof.

As if a man warned to answer a matter in Writ, there he shall not answer to any other natter then is contained in the Writ, for that vas the end of his coming.

8.De-

Of Logick.

Derivativa potestus non potest esse major

primitivà.

A Servant shall be stopped to say the Franktenement is belonging to his Master, by a Recovery against his Master, although the Servant be a stranger to the Recovery; for he shall not be in a better case then he is in, whose Right he claimeth or justifieth.

> Quod ab initio non valet, in tractutemporis non convalescit.

If an Infant or a Maried woman do make a Will, and publish the same, and afterwards dieth, being of full age or fole, notwithstanding this Will is void.

Unumquodque dissolvitur eo modo quo col-

ligatur. An Obligation or other matter in writing may not be discharged by an Agreement by word, but by writing.

He that claimeth athing on high, Shall neither have gain nor loss thereby.

As if one Joynt Tenant make a Lease o his Joyntee, referving rent, and die; the Heir which surviveth shall have the Reversi OR

nofhis Joyntee, L ecometh in by the er his companion:

Allowhere the Hu versin right, refer Mhave these indice de rent.

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on of his Toyntee, but not the rent, because he cometh in by the first Feoffor, and not under his companion:

Also where the Husband being leased for years in right, referving a rent, the woman shall have the residue of the term, but not the rent.

Debile fundamentum fallit opus.

When the Estate whereunto the Warranty is annexed is defeated, the Warranty is alz fo defeated.

Incidents may not be severed.

As if a man grant Wood to be burnt in fuch a house, Wood may not be granted anotwithfan way, but he which hath the house shall have the wood also.

Actio personalis moritur cum persona:

As if Battery be done to a man, if he that did the Battery or the other die, the Action is gone.

If the Lessor covenants to pay Quit Rents during the term, his Executor shall not pay it, for it is a personal covenant.

Things of higher nature do determine things of lower nature.

As-

As matters of writing do determine an a-

greement by words.

If an offence, which is Murder at the Common Law, be made High Treason, no Appeal lieth for it, for that the Murder is drowned and punishable as Treason, whereof no Appeal lieth.

16.

Majus continet minus.

Where by the Custom of a Manor a man may demise for Life, he may demise to his Wife durante viduitate.

17

Majus dignum trahit ad se minus dignum. As the Writings, the Chest or Box they are in.

Of THILOSOPHY.

18.

Nature vis maxima.

Natural Affection or Brotherly Love are good causes or considerations to raise an Use.

And one Brother may maintain a Suit for another.

19.

The Law favoureth some persons, viz.

Men out of the Realm or in Prison, Women

married, Infant shout intelligence er parties nor priv others right. A Defcent thall no aman out of the Ru urned woman, or

had a Leafe made the alter the death the hall not be charge elbriage. In Ideot thall not b

his Guardian or nest the Court; and he ca for himfelf that the domb man branead by his next trience.

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Sons, viz. Prison, W

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eternine an men married, Infants, Ideots, Madmen, Men without intelligence, Strangers, that are neirat the Con ther parties nor privy, and things done in on, no Appe anothers right.

A Descent shall not take away the Entry nereof no A of a man out of the Realm, or in Prison, or of

a married woman, or of an Infant.

And a Leafe made to the Husband and Wife after the death of the Husband, the Manora m Wife shall not be charged for Waste during demise to the Marriage.

An Ideot shall not be compelled to plead by his Guardian or next Friend, but shall be inus dignum, in the Court; and he that pleadeth the best

or Boxth plea for himself shall be admitted.

If a dumb man bring an Action he shall plead by his next friend.

. If a Leffee for years grant a Rent-charge, and furrendereth, the Rent shall be paid during the term to the Stranger.

A man outlawed or excommunicated may

bring an Action as an Executor.

And a mans Person before his Possessions. Mentioned of corporal pain, shall avoid a-Deed, but not his Goods.

And matter of possession more then matter of right, when the right is equal.

B. 4.

As.

As if a man purchase several Lands at one time; held of several Lords by Knights Service, and dieth, the Lord which first seizeth the Ward shall have it, otherwise the elder Lord.

22

Matter of profit or interest shall be taken largely: and it may be assigned, and it may not be countermanded: but matter of pleasure, trust, or authority, shall be taken strictly, and may be countermanded.

As licence to him in my Park or in my Garden to walk, extendeth only to himself, and not to his Servant, nor any other in his company, for it is matter of pleasure onely. Otherwise it is of a licence to hunt, kill, and carry away the Deer, which is matter of profit.

A Church way is matter of ease.

of POLITICAL.

23.

Nothing shall be void which by possibility may be made good. If Land be given to a man, and to a woman maried to another man, and the Heirs of their two bodies, this is a present Estate Tail, because of the possibility.

24.Ex

Ex nudo pa No man is bound le can be raifed

A confideration which ment in Deed or in La Affection, no real Familiarity.

the Law favouret As to pay fev àid to administer Damage feasant, wnlife.

Aservant to beat ter, if he cannot o To drive anoth hine own, until nem, is no Trespas

And for the good As killing of Fox fan house of nece

Commun As an Acquitta ne, where there I Lands at d by Knights S th first seize wise the eld

It shall be ta assigned, and ded: but mat uthority, shall nay be count

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of ease.

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h by possibility do be given to another modies, this is the possibility 24.1

Ex nudo pasto non oritur astio.

No man is bound to his promise; nor any life can be raised without good consideration.

A confideration must be some cause or occasion which must amount to a recompence in Deed or in Law, as Money or Natural Affection, not long Acquaintance nor great Familiarity.

25.

The Law favoureth a thing that is of necessity.

As to pay feveral Expences shall not be faid to administer, to distrain in the night Damage feasant, to kill another to save his own life.

A Servant to beat another to fave his Mafter, if he cannot otherwise chuse.

To drive another mans cattel amongst mine own, until I come to a place to shift them, is no Trespass.

26.

And for the good of the Commonwealth.

As killing of Foxes, and the pulling down of an house of necessity to stay a Fire.

27

Communis error facit jus.

As an Acquittance made by the Maior alone, where there be an hundred prefidents, is good.

B 5 28. And

28.

And things that are in the custody of the Law.

Goods taken by Diffres shall not be taken in Execution for the debt of the owner thereof.

29.

The Husband and Wife are one person.

They cannot fue one another, nor make any Grant one to another. And if a woman marry with her Obligor, the debt is extinct, and she shall never have any Action if another were bound with him, for by the Mariage the Action is suspended, and an Action Personal suspended against one is a discharge to all.

30.

An Obligation with a Condition to enfeoff a woman before fuch a day, and before the day the Obligor taketh her to wife, the Obligation is forfeited because he cannot enfeosf her, but he may make a Lease for years with a remainder to his wife.

When a joynt Purchase is during the Ma-

riage, every one shall have the whole.

When a joynt Purchase during the Mariage is made, and the Husband sell, the Wise shall have a *Cui in vita* for the whole against both, and on a Feoffment made to one man

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and his Wife, and to a third person, the third person shall have one moiety.

3 I.

Allthat a Woman hath appertaineth to her Husband.

Personal things and things absolutely real, as Lands, Rents, &c. or Chattels real, and things in Action, are onely in her right; notwithstanding real things and things in Actionahe may dispose at pleasure, but not will noncharge them: and he shall have her real. Chattels if he survive. Of things in Actionathe woman may dispose by her last Will, and she may make her Husband her Executor, and he shall recover them to the use of the last Will of his Wise.

If a Lessee for years grant his term to as man or woman, and to another, they are joynt Tenants: but if Goods be given to her and to another, her Husband and the other are Tenants in common.

The Husband may release an Obligation or Trespass for Goods taken when his Wife was sole, and it shall be good against the woman if he die: but if he die without making any such Release, the woman shall have the Action, and not the Executor of her Husband.

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The woman furviving shall have all things in Action, or her Executors if she die.

The Husband shall be charged with the

Debts of his Wife but during her life.

The will of the Wife is subject to the will of her Husband.

Note, a Feoffment made to the Wife, she shall have nothing if her Husband do not thereunto agree.

MORAL RULES.

33

The Law favoureth works of charity, right, and truth, and abhorreth fraud, covin, and incertainties, which obscure the Truth; contrarieties, delays, unnecessary circumstances, and such like.

34.

Dolus & fraus una in parte sanari debent.

No man shall take benefit of his own wrong. If a man be bound to appear at a day, and before the day the Obligee casts him in prison, the Bond is void.

A Grant of all his Woods in B Acre which may be reasonably spared, is a void Grant, if it be not reserved to a third person

to appoint what may be spared.

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A Feoffment women, Hab wher Acre to t

Lex neminen

The Law con a Servant be lab is command to lay, he ferved A covenant the Surrender of covenanter do more years to ken, although the which by the latt, for that the orto make.

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A Feoffment made in Fee of two Acres to two men, *Habend*' one Acre to one, and the other Acre to the other; this *Habend*' is void.

Lex neminem cogit ad impossibilia, &c.

The Law compelleth no man to shew that which by intendment he doth not know: as if a Servant be bound to serve his Master in all his commandments lawful, it is a good plea

to fay, he ferved him lawfully.

A covenant to make a new Lease upon the Surrender of the old Lease, and after the covenanter doth make a Lease by Eine for more years to estrange, the covenant is broken, although the Lesse did not surrender, the which by the words ought to be the first Act, for that the other had disabled to take or to make.

LAW CONSTRUCTIONS.

The Law expoundeth things with equity and moderation, to moderate the strictness. It is no Trespass to beat his Apprentice with a reasonable correction, or to go with a woman to a Justice of Peace, to have the Peace of her Husband against the will of her Husband, which equity doth restrain the generality, if there be any mischief or inconvenience

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ods in B Act red, is a voi a third perfo venience in it: As if a man make a Feoffment of his Lands in, and with Common, in all his Lands in C, the Common shall be intended within his Lands in C, and not in his other Lands he shall have elsewhere.

36.

Every act shall be taken most strictly against him that made it.

As if two Tenants in common grant a Rent of 10 s. this is feveral, and the Grantees shall have 20 s. but if they make a Lease, and referve 10 s. they shall have onely 10 s. between them.

So an Obligation to pay 10 s. at the Feast of our Lord God, it is no plea to say that he did pay it, but he must shew at what time, or else it will be taken he paid it after the

Feaft.

He that cannot have the effect of the thing shall have the thing it self.

Ot res magis valeat quampereat.

As if a Termor grant his Term Habendum immediate post mortem suam, the Grantee shall have it presently.

When many joyn in one AEt, the Law faith it is the AEt of him that could best do it, and that thing should be done by those

of the best skill.

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the Law fail could best d be done by thos As the Diffeizee and the Heir of the Diffeizor, who is by difcent, joyn in a Feoffment, this shall be the Feoffment of the Heir onely, and the Confirmation of the Diffeizee.

And the Merchant shall weigh the wares, and not the Collectors.

39.

When two Titles concur, the elder shall be preferred.

40.

By an Acquittance for the last Payment all other Arrearages are discharged.

41.

One thing shall enure for another.

If the Lessor enfeosif the Lessee for Life, it shall be taken for a Confirmation.

42.

In one thing all things following shall be concluded, in granting, demanding, or prohibiting.

If one accept a Close or Wood, the Law will give him a way to it.

43.

A man cannot qualifie his own Act.

As to release an Obligation untill such a time.

The Construction of the Law may be altered

by the special agreement of the parties. If a house be blown down with the wind the Lessee is excused in Waste; but if he have covenanted to repair it, there an Assion of Covenant doth lie by the agreement of the parties.

45.

The Law regardeth the intent of the parties, and will imply their words thereunto; and that which is taken by common intendment shall be taken to be the intent of the parties: and common intendment is not such an intendment as doth stand indifferent, but such an intent as hath the most vehement presumption. All incertainty may be known by circumstances, every Deed being done to some purpose, reason would that it should be construed to some purpose; and variance shall be taken most beneficial for him to whom it is made, and at election.

An intendment of the parties shall be ordered according to the Law.

If a man make a Lease to a man and to his Heirs for ten years, intending his Heirs shall have it if he die, notwithstanding the intent the Executors shall have it.

47. Qui

Qui per alia cidetur. A promife mad ntion of a thing landand, if he age ration, in an Act, tre the Affumpti And if my Serval her in Deot, I shall fire.

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a man and to ding his Heir withstanding the ye it. Qui per alium facit, per seipsum facere

A promise made to the Wise in consideration of a thing to be performed by her Husband, if he agree and perform the consideration, in an Astion of the Case he shall declare the Assumption was made to him.

And if my Servant fell my Goods to another in Debt, I shall suppose he bought them of me.

CUSTOMS:

Consuetudo est altera lex.

Customs are of two forts, General Customs in use throughout the whole Realm, called Maxims; and Particular Customs used in some certain County, City, Town, or Lordship, whereof some have been specified before, and some follow here, and where occasion is offered.

GENERAL CUSTOMS.

The Kings Excellency is so high in the Law, that no Freehold may be given to him, nor derived from him, but by matter of Record.

Every Maxim is a fufficient Authority to it felf; and which is a Maxim, and which is not, shall always be determined by the Judges,

47.2

Judges, because they are known to none but to the Learned.

A Maxim shall be taken strict.

A particular Custom, except the same be a Record in some Court, shall be pleaded and tried by 12 men.

CHAP. II. STATUTES.

THE last ground of the Laws of England standeth in divers Statutes made by our Sovereign Lord the King and his Progenitors, and by the Lords Spiritual and Temporal, and the Commons, in divers Parliaments, in such cases where the former Laws seemed not sufficient to punish evil men, and to reward the good.

Of general Statutes the Judges will take notice if they be not pleaded, but not of spe-

cial or particular.

All Acts of Parliament, as well private as general, shall be taken by reasonable confiruction, be collected out of the words of the Act onely, according to the true intention and meaning of the maker.

Four

Four Lessons in Laws come in I. The inferiour of toperiour. 2. The Law gener tial. 4. Mans Laws so l

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Four Lessons to be observed where contrary Laws come in question.

1. The inferiour Law must give place to the fuperiour.

2. The Law general must yield to the Law special.

3. Mans Laws to Gods Laws.

4. An old Law to a new Law.

And oftentimes all these Laws must be Laws of Englation joyned together to help a man to his right; ites made by a as if a man diffeized, and the Diffeizor made and his Proge a Feoffment to defraud the Plaintiff; in this ual and Tem case it appears, that the said unlawful Entry ers Parliamed is prohibited by the Law of Reason.

er Laws feem But the Plaintiff shall recover the double men, and to Damage, and that is by the Statute of 8 H.6. And that the Damage thall be fessed by 12 Judges will men, that is, by the Custom of the Realm; , but not off and so in some cases these three Laws do maintain the Plaintiffs right.

And these Laws concern either mens Posreasonable of sessions or the Punishment of Offences.

the words of the And so much shall be sufficient to be said touching Common Law, Customs, and Statutes.

Concerning POSSES SIONS.

The difference between Possession and Seizin is:

Leafe for years is possessed, and yet the Lessor is still seized; and therefore the Terms of the Law are, that of Chattels a man is possessed, whereas in Feossments, Gifts in Tail, and Leases for life, he is called seized.

CHAP. III. Of possession of Franktenement.

Enant in Feelimple is he which hath Lands or Tenements to hold to him and his Heirsfor ever. It is the best Inheritance a man may have: he may fell, or grant, or make his will of those Lands.

And if a man die, they do discend to his

Heir of the whole bloud.

CHAP.

E Tail is of wh that thall inherit. Tenant in tail is fa

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CHAP. IV. FEE TAIL.

TEE Tail is of what body he shall come that shall inherit.

Tenant in tail is faid to be in two man-

Tenant in tail General, and Tenant in tail Special.

General Tail is, where Lands or Tenements be given to a man and his Wife, and to the Heirs of their two bodies, or to his Heirs Males, or to his Heirs Females.

Tenant in Tail is not punishable for Waste.

Tenant in Tail cannot will his Lands, nor bargain, fell, or grant, but for term of his life, without a Fine or Recovery.

If a man will purchase Lands in Fee, it behoveth him to have these words Heirs in his Purchafe.

If a man would grant Lands in Tail it behoveth him to appoint what body they shall come of.

Yet a Devise of Lands to a man and his CHA Heirs Males is a good Intail, and of Lands to a man for ever a good Fee Simple.

How

How Lands shall discend.

Inheritance is an Estate which doth difcend: it may not lineally afcend from the Son which purchafeth in Fee, and dieth, to his Father; but discendeth to his Uucle or Brother, and to his Heirs, which is the next of the whole bloud, for the half bloud shall not inherit, but the most worthy of bloud, as of the bloud of the Father before the Mother, of the elder Brother before the other,

and born within espousal.

A Discent shall be intended to the Heir of him which was last actually seized; that the Sifter of the whole bloud, where the elder Brother did enter after the death of his Father, and not his Brother of the half bloud, nor any other collateral Cousin shall inherit; yet notwithstanding such a one is Heirto a common Ancestor: in which Rule every word is to be observed, and so in every Maxim, if the Land, Rent, Advowson, or such like to discend to the elder Son, and he die before any Entry or receipt of the Rent, or presentment to the Church, the younger Son shall have and inherit: and the reason is, because that in all Inheritances in possession he which claimeth title thereunto as Heir ought to make him-

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of the Guardian Selfion and Fra

for he dying feiz hinder, or an E me te which cla minder as Heir, e to him that ha

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And if the Lands and of the Father. Herer have the Medicud of him And to the Hen erchaler: As if the Father

deth to the Son. Mont Heirs of the thall difeered to a or father of th is of the Moth are more near

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Dow Lands hall viscend.

himself Heir to him that was last asqually feized.

Here the Possession of the Lessee for years which dothe or of the Guardian, shall invest the actual cend from Possession and Franktenement in the elder and dieth, Brother.

his Uucle But he dying seized of a Reversion, or a hich is them Remainder, or an Estate for Life or in Tail, alf bloud I there he which claimeth the Reversion or hy of blood, Remainder as Heir, ought to make himself before the M Heir to him that had the Gift or made the fore theoth Purchase.

Feodo excludeth an Estate Tail, where the d to the Heir fecond Son shall inherit before the Daugh-

here the de And if the Lands be once settled in the eath of his bloud of the Father, the Heir of the Mother ehalf bloud, shall never have them, because they are not nall inherit; of the bloud of him that was last seized.

Heirtoaco And to the Heir of the bloud of the first

e every word Purchaser:

Maxim,ift As if the Father purchase Land, and it dilike to diffe feendeth to the Son, who entereth and dieth before any E without Heirs of the Fathers part, then the presentment Land shall discend to the Heirs of the Moshall have a ther or Father of the Father, and not to the ause that in Heirs of the Mother of the Son, although which claim they are more near of bloud to him that was ught to mal last seized, yet they are not of the bloud of the If his first Purchaser.

Parceners.

If the Heirs be Females in equal distance, as Daughters, Sisters, Aunts, &c. they shall inherit together, and are but one Heir, and are called Parceners.

Gavilkind.

Doth discend to all the Sons, and if no Sons to all the Daughters, and may be given by Will by the custom.

CHAP. V. TARCENERS.

PArceners are of two forts, Women and their Heirs by the Common Law, Men by the Custom.

They may have a Writ of Partition, and the Sheriff may go to the Lands, and by the Oaths of 12 men make Partition between them, and the eldest shall have the Capital Mesuage by the Common Law, and the youngest by the Custom. Where the parties will not shew to the Jury the certainty, there they shall be discharged in conscience, if they make partition of so much as is presumed and known by presumptions and likelihoods.

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n Law, and there the part e certainty,th n conscience, ouch as is pre

equal distance Parceners may by agreement make partic. they shall ion by Deed or by Word, and the eldest ne Heir, and irst chuse, unless their agreement be to the ontrary.

> Every part at the time of Partition must e of an even yearly value, without incumbrance.

Sons, and Rent may be referved for equality or parand may be a tion (and may be distrained for) without a Deed.

> Parceners by divers Discents, before parition being disseized, shall have one Assize.

> A Parcener before partition may charge r demise her part.

The entry or act of one Copartner or orts, Women oynt Tenant shall be the act of both, when it mon Law, Ma ; for their good.

If a Parcener after partition be entred, she of Partition, lay enter upon her Sifters part, and hold it ands, and by ith her in Parcenary, and have a new Par-Partition betwee tion, if she hold none of her part before she have the Cap ras outed, viz. in exchange.

CHAP. VI. FOYNT TENANTS.

otions and like Oynt Tenants be fuch as have Joynt Estates in Goods or Lands, where he that that furviveth shall have all without incumbrance, if the Tenements abide in the same Inthe France plight as they were granted.

Joynt Tenants may have several Estates.

A Joynt Tenant cannot grant a Rent WILLIN

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CHAP

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charge but for term of his own life.

A Joynt Tenant may make a Leafe for abuthous life or for years of his part, or release, and in m the Leffee for years may enter, although the mount Lessor die before the Lease begin, and his Heir shall have the Rent, but the Survivor the Reversion.

A Joynt Tenant may have a writ of Partition by the Statute of 31 H.8.c.32. A Partition made by Joynt Tenants, or Tenants in Ima had he common of Estates of Inheritance, must be

by Indenture, by word'tis void.

CHAP. VII. TENANTS IN COMMON.

et kill a Bollock v Enants in Common are those that hold would be Lands and Tenements by feveral titles. They may joyn in Action Personal, but here he they must have several Actions Real. They may have a writ of Partition by the manual

Statute of 31 H.8.c.32.

If one Parcener, Joynt Tenant, or Tenant

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feveral Estate grant a R wn life.

le begin, and but the Survi

c a writ of Pa 1.8.c.32. APa void.

III.

ions Real.

enant, or Ten ars, is not.

without incl a Common take, all the others have no rebide in the feedy but by Ejectione firme, or fuch like, or Vaste.

GAVILKIND LANDS.

nake a Lease Tenant by the courteste of Kent, whether , or release, chave iffue or no, untill he marry, and so ter, although orth, he may not commit Waste.

CHAP. VIII. TENANT IN DOWER.

ts, or Tenant A Woman shall be endowed of all forts eritance, mul & of Inheritance of her Husband, where e Issue that she had by him may inherit as eir to his Father, by meets and bounds of a ird part.

She shall have Houseroom, and Meat, and COMMON rink, in common for 40 days: but she ly not kill a Bullock within those 40 days those that her the death of her Husband, in which by several title ne her Dower ought to be affigned her.

Personal, The Assignment by him that had the inktenement is good, but by him that is Partition by Lardian in Soccage, or Tenant by Elegit, erte Elegit) or Statute, or Lessee for

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She

She is to demand her Dower on the Land She shall recover damages when her Hus band died seized from the death of her Hu band, if the Heir be not ready at the first day

to assign her Dower.

She shall have all her Chattels real again except her Husband fell them: he may n charge them or give them by his Will. As likewife her Bonds, if the Money were du halle in the life of her Husband, and all convenier Apparel; but if she have more then is fit for the her days it will be a fit of the have more then is fit for the her days it will be a fit of the her days it will be her degree, it will be Assets.

A Woman shall be barred of her Dowe fo long as she detaineth the body of the He being in ward, or the Writing of the Son

Land.

A Woman shall not be endowed of a Lands that her Husband joyntly holde have leave with another at the time of his death.

Dower of Gavilkind Lands.

If the Woman shall be endowed of half fo long as the is unmaried and chafte, it may be held with the Heir in common.

It is of Lands and Tenements, and not a Fair or fuch like, where the Heir lofeth his Inheritance, there fhe lofeth not Dower.

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Tenant for Life with and forfeit !! eried apon him in wife if the Husba

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kind Lands.

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FOYNTURE.

e death ofher If a woman have a Joynture before Marieady at the fire, the may claim no Dower, 27 H.8.

If it be made during Mariage, the may Chattels real ater into her Joynture presently,

them: hema If she enter or accept of it, she shall not.

ne Moneywer If she shall be expulsed of any part of her. d, and all com oynture, the shall be endowed of the resie more then we ofher Husbands Lands.

CHAP. IX. Tenant for term of Life.

Enant for term of Life is he that hath. Lands or Tenements for term of his Life, r another mans Life, and none of leffer Estate may have a Freehold.

If a Tenant for Life fow the Lands, and die esore the Corn be reaped, his Executor hall have it, but not the Grass nor other ruit.

If a Tenant for Life be impanelled upon an nquest, and forseit Issues and die, they shall be levied upon him in the Reversion: and so ikewife if the Husband on the Lands of the. CHAP. Wife.

Tenant for Years, ac. CHAP. X. Tenant for term of Years.

30

Enant for term of Years is where a man distribution letteth Lands or Tenements to another interest for certain Years.

He may enter when he will, the death of the the Leffor is no let, and may grant away his left term before it begin : but before he enter he my bigon Cannot furrender, nor have any Action of the file Trespass, nor take a Release.

He is bound to repair the Tenements.

The Lessor may enter to see what Repa rations or Waste there is, and he may di strain for his Rent or have an Action of Debt.

If Tenant for life or years granteth a landering greater Estate then he hath himself, he doth hit hat him forfeit his term.

CHAP. XI. TENANT AT WILL.

Enant at Will is he that holdeth Lands or Tenements at the Will of another.

The Lessor may reserve a yearly Rent, change and may diffrain for it, or have an Action of the Debt: the Lessee is not bound to repair the time time The Tenements.

The will is dete for, or of a Wi e; or when the L

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XI. T WILL.

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The will is determined by the death of the Leffor, or of a woman Leffee by her Mariage; or when the Lessee will take upon him ars is whereal to do that which none but the Lessor may do ements to and lawfully, it determineth the will and possession, and the Leffor may have an Action of will, the dead Trespass for it.

The Leffee shall have reasonable time to before he ent have away his Goods and his Corn; but he ave any Acte shall lose his Fallow and his Dung carried

forth.

CHAP. XII. REMAIN DER.

A Remainder is the relidue of an Estate ar I the fame time appointed over, and must be grounded upon some particular Estate given before, granted for years, or life, and for forth.

And ought to begin in Possession, when the particular Estate endeth: there may be no mean time between either by Grant or-

No Remainder can be of a Chattel Persove a yearly N nal: a Remainder cannot depend on a mathave an Action ter ex post facto, as upon Estate Tail, upon ound to repair condition that if the Tenant in Tail fell, then

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the Land to remain to another, is a void Remainder.

CHAP. XIII. REVERSION.

Reversion is the residue of an Estate that is lest after some particular Estate granted out in the Grantor: as if a man grant Lands for Lie, without surther granting, the Reversion of the Fee Simple is in the Lessor.

CHAP. XIV. WASTE.

Afte lieth against a Tenant by the courtesie, for life, for years, or in dower, and they shall lose the place wasted, and treble damages.

Waste lieth not against a Tenant by Elegit, Statute Merchant or Staple, but Account after the debt or damage levied.

Waste or Account will lie against a Tenant in Morrgage, because he had Fee conditional.

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Waste is not given to the Heir for Waste in the life of his Father.

Waste is given against the Assign of the Tenant for life, or of anothers life, but not against the Assignee of a Tenant in dower, or of the courtesie, it is to be brought against: themselves.

It is Waste to pull up the Forms, Benches, particular El Doors, Windows, Walls, Filberd trees, or, r: as if a willows planted.

CHAP: XV. DISCONTINUANCE.

Iscontinuance is where a man that hath the present possession by making a larger Estate then he may, divesteth the Inheritance of the Lands or Tenements out of anohe place wall ther, and dieth, and the other hath right to. have them, but he may not enter because of Cenant by Ell fuch alienation, but is put to his Writ.

If a man feized in the right of his Wife, on if a Tenant in Tail, made a Feoffment, and. died, the Wife might not enter, nor the Issue in Tail, nor he in Reversion, but are put to their Action.

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Discents.

Now the wife may enter by the Statute 32 H.8. and a Recovery fuffered by the Ternant by courtesie, or by the Tenant after the possibility of Issue extinct, or for term of life is now made no Discontinuance.

Such things that pass by way of a Grant by Deed without Livery and Seizin, cannot be discontinued as a Reversion, or Rent-

charge, Common, &c.

A Release or Confirmation without warranty maketh no Discontinuance.

CHAP. XVI. DISCENTS.

Iscents which take away Entries is where a man disselfeth another and dieth, and his Heir entreth, or maketh a Feossent to another in Fee or in Tail, and he dieth, and his Heir entreth, these Discents put a man from his Entry.

A Difcent during Minority, Mariage, non fana mentis, Imprisonment, or being out of the Realm, do not take away an Entry.

Discents of Rents in gross, the Lord notwithstanding may distrain.

A Dying seizee of a term for life, or of a Remainder or Reversion, doth not take away

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Continual Claim. Remitter. by the State an Entry : he must die seized in Fee and fered by the Franktenement. A Diffeisin cannot be to one Joynt Tenant. t, or for term

or Parcener alone, if it be not to the other. If a condition be broken after a Discent,

the Donor, Feoffor, or his Heirs may enter.

A wrongful Disseisin is no Discent, unless the Diffeisor have quiet possession five years. without entry or claim. 32 H.8.

CHAP. XVII. CONTINUAL CLAIM.

The same of the state of the state of the state of Ontinual Claim is a demand made by another of the property or possession of a thing which he hath not in possession, but is. withholden from him wrongfully; deseateth a Discent happing within a year and a day after it is made, and now by the Statute within five years. Bright But his real of the 10 th

CHAP. XVIII. REMITTER;

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D Emitter is when by a new title the Franktenement is cast upon a man, whose Entry was taken away by a Discent

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ity, Mariage, or being out an Entry. the Lord no

for life, ord not take aw or Discontinuance, he shall be in by the elder title: as if Tenant in Tail discontinue the Tail, and if after disseiseth his Continuance, and dieth thereof seized, and the Land discend to his Issue, in that case he is said to be in his Remitter, viz. seized his ancient Estate Tail.

When the Entry of a man is lawful, and he taketh an Estate to himself when he is of full age, if it be not by Deed indented, or matter of Record which shall estop him, it shall be to him a good Remitter.

A Remitter to the Tenant shall be a Remitter to him in the Remainder and Rever-

fion.

CHAP. XIX. TENURES.

ALL Lands are holden of the King immediately, or of fome other person; and therefore when any that hath Fee dieth without Heir, the Lands shall escheat to the Lord.

And they are holden for the most part either by Knights Service or in Soccage.

Knights Service draweth to it Ward, Mariage and Relief, viz.

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Afather.

Of Ward, Mariages, and Relief.

The Heir Male unmaried shall be in ward

e he is said to untill 21 years of age. If he be maried in the life of his Ancestors, yet the Lord shall have the profit of

None shall be in ward during the life of

If the Heir refuse a convenient Mariage, he shall pay to the Lord the value when he ant shall beal cometh to full age.

If the Ward marry against the will of the Guardian, he shall pay him the double value of his Mariage: but if the Heir be of the full age aforesaid, he shall pay a Relief.

A Relief for a whole Knights Fee is 5 1. for half a Knights Fee 50 s. for a quarter 25 s. for more, more; for lefs, lefs, accordingly.

A Relief is no Service, but is incident to a Service, the Guardian must not commit waste, viz. Chattels.

> Tenure in Soccage. file les bath in Fact to the first

Tenure in Soccage is where the Tenant holdeth of his Lord by Fealty, Suit of Court, and certain Rent for all manner of Service.

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is lawful, and the Land till his full age. when he is off dented, or man the Father. him, it shall

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IX. S.

of the King other person; h Fee diethwil heat to the Lan he most part n Soccage. oit Ward, M The Lord shall not have the Wardship, but a Relief presently after the death of his Tenant.

A Relief for Soccage land is a years rent, and is to be paid presently upon a Discent or Purchase. As if the land were held by Fealty, and 10 s. rent per an. 10 s. shall be paid for Relief.

The next of the kin to whom the Inheritance may not discend, shall have the ward-ship of the land and of the Heir, untill his age of 14 years, to the use of the Heir, at which age the Heir may call him to account.

If the Guardian die, the Heir cannot have an Action of Account against the Executor of

the Guardian. I clim it is the state of the

The Executor of the Guardian may not have the Wardship, but some other of the next of kin. The Husband may not alien the Interest of the Wife in the Guardianship, nor hold it; if she die it may not be fold.

If another man occupy the lands of the Heir as Warden in Soccage, the Heir may

call him to account as Guardian.

If the Guardian hold the Jands after the Heir is 14, the Heir shall call him to account as his Bailiff.

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She may fell of twenty.

No man may be be 21; before to Deeds, as do

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own hands are vo except for necest tel, &c. Gavilkind.

The next of kin shall have the Guardian-ship of the body and lands, untill the Heir be-15 years of age.

Diversities of Azes.

A Man hath but two ages.

The full age of Male and Female is One and twenty.

A Woman hath six Ages.

The Lord her Father may distrain for Aid for her Mariage when she is seven.

She is double at nine.

She is able to affent to Matrimony at twelve.

She shall not be in ward if she be four-teen.

She shall go out of ward at fixteen.

She may fell or give her Lands at one and twenty.

No man may be fworn in any Jury before he be 21; before which age all Gifts, Grants or Deeds, as do not effect by delivery of his own hands are void, and all others voidable, except for necessary meat, drink, and apparel, &c.

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An In ant may do any thing for his own advantage as to be Executor, or such like. An infant shall sue by his next Friend, and answer by his Guardian.

GAVILKIND.

The Heir may give or fell at fifteen years of age.

1. The Land must discend, not be given

him by Will.

2. He must have full recompence.

3. It must be by Feossment, and Livery of Seisin with his own hands, not by Warrant of Attorney, or any other Conveyance.

By the Civil Law an Infant may be an

Executor at 17 years of age.

An Infant may make a Will of his Goods at 14 years of age, and a Maid at 12.

CHAP. XXI. RENTS.

There are three manners of Rents, Rentfervice, Rent-charge, Rent-feck.

Rent-service is where a man holdeth his Lands of his Lord by certain Rent, &c.

Rent-charge is granted or referved out of certain lands by deed with a claufe of diffress.

Rent-seck is a Rent granted without a distress: or Rent-service, severed from other service, becometh a Rent-seck. The

The Reversion o roid, if the Rever I Ifa Rent be g it is a Rent-feck. He which is not le hout remedy for t The gift of a Peny Seizin of a Rent-le Beilin. No Rent may be re at, Gift, or Leafe, b d his Heirs, not to A Rent-charge is urchase of parcel of urchase of any of his shall be apportion uding to value of Inte Land discend o

A PERSONAL PROPERTY.

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The Reversion of a Rent without a Deed is void, if the Reversion be not in the Reservor. If a Rent be granted from the Reversion, it is a Rent-seck.

He which is not feized of a Rent-feck, is

without remedy for the fame.

The gift of a Peny by the Tenant in name of Seizin of a Rent-feck, is a good possession and Seisin.

No Rent may be referved upon any Feoffment, Gift, or Leafe, but onely to the Donor

and his Heirs, not to any stranger.

A Rent-charge is extinct by the Grantees purchase of parcel of the Land, but by the purchase of any of his Ancestors it shall not, it shall be apportioned like Rent-service, according to value of the Land; but if the whole Land discend of the same Inheritance, the Rent is extinguished.

By the grant of the Reversion the Rents and Services pass. If Rent be granted to a man without more, faying, he shall have it for term of his life. If the Lord accept of Rent or Service of the Feoffment, he exclude th himself of the arrerages of the time of the Feoffment.

For a Rent-charge behind one may have an Action of Annuity, or differain.

DISTRESS.

For what, when, and where a man may diftrain.

A man may distrain for a Rent-charge, Rent-service, Heriot-service, and all manner of service, as Homage, Escuage, Fealty, Suit

of Court, and Relief, &c.

Heriot custom must be seized: and for Amerciaments in a Leet, upon whose ground soever it be in the Liberty. A man may not distrain for Rent after the Lease is ended, nor have Debt upon a Lease for life, before the Estate of Franktenement be determined.

A man may not distrain in the night but

for Damage feafant.

A man may not distrain upon the Possessions of the King, but the King may distrain of any Lands of his Grantee or Patentee.

A man may not distrain the Beasts of a strainger that come by escape, untill they have been Levant and Couchant on the Ground,

but for Damage feafant.

A man may not distrain the Oxen of the Plough, nor a Milstone, nor such like, that is for the good of the Commonwealth, nor a Cloke in a Tailors Shop, nor Vistuals, nor Corn in Sheafs, but if it be in a Cart, for Damage seasant.

A Distress must be always of such things

as the Sheriff may make a Replevin.

A man may not fever Horses joyned together, or to a Cart.

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the Oxenoft fuch like, that nwealth, nor or Victuals, M a Cart, for Di

s of fuch thing eplevin. rses joyned to

If a man put cattel into a pasture for a week, and afterwards J.N. doth give him notice that he will keep them no longer, and the Owner will not fetch them away, J.N. may distrain them Damage seasant.

If a man take Beasts Damage feasant, and driving them by the high way to a Pound, the Beasts enter into the house of the Owner, and the taker prayeth the delivery of them, and the Owner will not deliver them, a Writ of Rescous lieth.

If a man distrain Goods he may put them where he will: but if they perish he shall

answer for them.

If cattel, they ought to be put into a common Pound, or else in an open place where the Owner may lawfully come and feed them, and notice given to him thereof, and then if they die it is in default of the Owner.

Cattel taken Damage feafant may be impounded in the fame Land; but goods or cattel taken for others things may not.

Sheep may not be distrained if there be a

fufficient Distress besides.

No man shall drive a Distress out of the County wherein it was taken.

No Diffress shall be driven forth of the Hundred, but to a Pound Overt within three miles.

A Distress may not be impounded in several places, upon pain of 5 l. and treble damage.

Fees for impounding one whole Distress

A. d.

The Executor or Administrator of him. which had Rent or Fee-farm in Fee, in Fee Tail, or for life, may have Debt against the Tenant that should pay it, or distrain; and this is by the Stat. 32 H.8.

So may the Husband after the death of his Wife, his Executor or Administrator. So may he which hath Rent for another mans life, distrain for the arrearages after his death, or have an Action of Debt, 32 H.8.

· But if the Landlord will diftrain the goods or cattel of his Tenant, and do fell them, or work them, or convert them to his own use, he shall be Executor of his own wrong.

CHAP. XXIII. DISSEISIN OF RENTS.

Hree causes of Disseizin of Rent-service, Rescous, Replevin, Inclosure.

Four

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Rent. &c. And offuch D Action of Novel mant, and recor andhis damage behind another zin, and recover

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Debt, 32 H. distrain the gow do fell them, n to his own wn wrong.

III. RENTS.

of Rent-fervice ofure. FOR Rescous and Pound-breach.

Four of Rent-charge, Denyer, and Inclo-

fure. Forstalling is a Disseizin of all.

Forestalling is when the Tenant doth with force and arms waylay or threaten in fuch manner, that the Lord dareth not distrain or demand the Rent.

Denial is, if there be no Distress on the Land, or if there be none ready to pay the

Rent, &c.

And of fuch Diffeizins a man may have an Action of Novel Diffeizin against the Tenant, and recover his Rent and arrearages, and his damage and costs: and if the Rent be behind another time, he shall have a Redisseizin, and recover double damage.

Rescous and Pound-breach.

If the Lord distrain when there is no Rent nor Service behind, the Tenant may not rescue: otherwise if another distrain wrongfully; but no man may break the Pound, although he did tender Amends before the cattel were impounded.

If the Lord come to distrain, and see the Beafts, and the Servant drive them out of his Fee, the Lord may not have Rescous, because he had not the possession, but he may follow them and distrain, but not damage feasant.

CHAP.

CHAP. XXIV.

Ommon is the right that a man hath to put his Beafts to pasture, or to use and occupy Ground that is another mans.

There be divers Commons, viz. Common in grois, Common appendant, Common appertinant, Common because of Neighbour-

hood. Vide Terms of Law.

The Lords of Wastes, Woods, and Pastures, may approve against their Tenants and Neighbours with Common appertinant, leaving them sufficient Common and Pasture to their Tenants.

As if one Tenant surcharge the Common, the other Tenants may have against him a Writ De admensuratione passura, but not against him that hath Common for Beasts without number; neither may the Lord enclose from such Tenants, if he do, the Tenant may bring an Assize against him, and recover treble Damage; but the Lord may have a Quojure, and make the Tenant shew by what title he claimeth.

CHAP.

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CHAP: XXV.

HE Kings High Way is that which or to user leadeth from Village to Village.

A common High Way is that which lead-

viz. Commo eth from a Village into the Fields.

of Neighbor one certain place unto another. 3 Ed. 3.

In the Kings High Way the King hath onoods, and he ly passage for himself and his People; and their Tename the Franktenement and all the Profits are in an appertion, the Lord of the Soyl, as they be presented at on and Passage the Lect.

Of a common High Way the Franktenement and the Profits are to him that hath the Land next thereto adjoyning; and if it be flura, but m flor Beak fremedy but by Presentment in the Leet.

If a Private Way be straitned, or if a Bridge there which another ought to repair, be decayed, an Action of the case lieth; but if the Way be stopped, an Assize of Nusance lieth, and the Lessee may have it after the Lessors years begin, or the Lessee may have an Action of the case. If the most part of a Water Way be stopped, an Assize will lie.

CHAP.

STREET PO

r mans.

CHAP.

CHAP. XXVI. LIBERTIES.

Liberty is a Royal Privilege in the Hattel Real are G

A hands of a Subject.

All Liberties are derived from the Crown, strands is a control of the crown, strands is a control of the crown, strands in the crown, strands is a control of the crown. and therefore are extinguished if they come to the Crown again by Escheat, Forseiture, while Herisman or fuch like; for the greater doth drown in the land in the leffer.

One may have a Park, a Leet, Waif, Stray, and Related Wreck of Sea, and Tenura placitorum, by Marin Prescription, and without allowance in Eyre; he Gurden much but not Cognizance of Plea, nor Catalla fel upon pain of la lonum vel fugitivorum aut utlagatorum.

A Liberty may be forfeited by mifuling, with land, at as to keep a Market otherwise then it is

granted.

A Liberty mry be forfeited for not using, thip hallo core when it is for the good of the Common- Grante, he is wealth; as not to exercise the Office of the Idone of the Indone of the Clerk of the Market, but not to use a Mar- utfriend, that w. ket is not.

Whatfoever is in the King by reason of washingthe his Prerogative, may not be granted or par- weit otherwise doned by general words, but by special.

CHAP

CHAP. Of Oratto

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ifor years, or at wi shall havethe fame a

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Leafe he made to

man and his Heirs, p rords of Purchase,

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CHAP. XXVII. Of Chattels Real.

Privilege in CHattels Real are Guardianships, Leases for years, or at will, &c.

from the Con Guardian (hip is a commodity of having shed if they a the custody of the Body or Lands, or both; heat, Forem where the Heir is within age : and the Lord ater doth of whom the Land is holden by Knight Service shall have the same to his own use, for it Leet, Waif, is as a Chattel Real, and therefore his Execuca placitorum tor shall have it.

llowance in I The Guardian must not do waste, nor ina, nor Catal feoff, upon pain of losing the Wardship: but utlagatorum, he must maintain the Building out of the ted by mill Issues of the Lands, and so restore it to the erwise then Heir.

If the Committee of the King commit, the ted for not w Wardship shall be committed to another; if of the Com he Grantee, he shall lose the Wardship.

the Office of And one of the Friends of the Ward, being not to use is next Friend, that will may sue for him.

If a Leafe be made to a man and his Heirs ing by reald or 20 years, it is a Chattel, and his Executor granted or hall have it: otherwise if a man will a Lease by special o a man and his Heirs, here the word Heirs re words of Purchase, and his Heirs shall lave it.

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Of Chattels Personal. 40

If a man grant proximam advecationem to Chutch that F.S. and his Heirs, it is but a Chattel, for it information is but for unica vice.

Writings pawned for Money lent are finfter the He

Chattels.

If a Woman have Execution of Lands by Milliam at Statute Merchant, and taketh a Husband, he harthey man may grant it, for it is a Chattel.

Of Chattels Personal.

Chatcels Personal are Gold, Silver, Plate (60NF) Jewels, Utenfils, Beafts, and other Chattel and Moveable Goes whatfoever, Obligati Court ons, and Corn upon the ground.

All Goods as well moveable as unmoveable, Corn upon the ground, Obligation Comercine of Right of Actions, Money out of Bags, and withhe

Corn out of Sacks, sunt catalla.

Money is not to be passed by the Gran the continue of all his Goods and Chattels; nor Hawks to be made in nor Hounds, nor other things fera natura for the property is not in any, not after the mindent, that are made tame, longer then they are in hi whitedown possession; as my Hounds following me, o plan Adion o my Man, or my Hawk flying after a Fowl, o in muling my Deer hunting out of my Park: but they stray of their own accord, it is lawful for any man to take, and the Heir shall have in forbisals them.

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CHAP.

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advecationem All Chattels shall go to the Executors? a Chattel, a vats and Furnaces fixed in a Brewhouse, or Dyehouse by the Lessee: if they be fixed by Money lent renant in Fee the Heir shall have tyem.

Now something bath been said concerning Possessions, it followeth that it be shewed, how they may be conveyed from one man

to another.

CHAP, XXVIII. Cf CONVEY ANCES.

foever, Oblin N every Conveyance there must be a Grantor and a Grantee, and something

and, Obligate The Conveyance of some persons is void,

Conveyance of a Woman Covert is void. ed by the Githout the consent of her Husband; and it els; nor Har ught to be made in her or his Name, except ngs fera nam be done as Executor to another.

ny, not after Of an Infant, that which doth not take n they are in feet with the delivery of his own hands, is following me pid, and an Action of Trespass will lie agafter a Fow unft him for taking the things given.

ory Park: by Otherwise it is but voidable, except it be cord, it is law Executor, or for necessary meat and e Heirshall ink, &c. for his advantage.

Void-

Duress Royal.

Voidable by the parties themselves an ethobanda their Heirs, and by them that shall have the Estates, except non sana himself.

Grants by Fine.

Voidable by a Writ of Error, by an In stead is go fant during his nonage, and by the Husban for Goods. for a Fine levied by his Wife alone durin Chattels 1

their Mariage.

Conveyance of some persons cannot h atterite, good for ever without the consent of other monos Path as the Dean without the Chapter, the Maie Remainder, without the Commonalty, and of other Bo lentin m dies Politick that have a Common Seal, a prejedforye of a Parfon without the Patron and Ord ithout Whit nary.

If there be no Condition in the Convert make a l

ance, it shall be intended the elder.

A Conveyance made to a Female Cove shall be good and of effect, untill her Hu band do difagree.

An Infant may be Grantee, so may a W man Outlawed, a Villain, a Bastard, and

Felon.

A Bastard can have no Heir but the Ist may Deed, of his body lawfully begotten.

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nemoria, or M. An Infant at the age of Difcretion by his Aual entry, and a Woman against the will ies themselve of her Husband may be a Disseizor or a Tre-

In all Conveyances there must be one nahed, which may take by force the Grant at

he beginning of the Grant.

A Grant made to the right Heirs of one of Error, by hat is dead is good, or Custodibus Eccl. is

Wife alone All Chattels real or personal may be

ranted or given without a Deed.

persons am Rent-service, Rent-seck, Rent-charge, ne consent of ommon of Pasture, or of Turbary, Rever-Chapter, tel on, Remainder, Advowson, or other things, y, and of the hich lie not in manual occupation, may not a Common se e conveyed for years, for life, in Tail or in Patron and ee, without Writing.

The Maior or Commonalty, or fuch like, ion in the Commot make a Lease for years without a

Deed.

CHAP. XXIX. Of DEEDS.

Hree things needful and pertaining to L every Deed, Writing, Sealing, and Devering.

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In:

In the Writing must be shewed the perfons Names, their Dwelling place, and De Things granted upon what confidera tion, the estate, whether absolute or condit. onal, with the other circumstances, and the confeeled, time when it was done.

No Grant can be made but to him that if tweet was party to the Deed, except it be by way rothe Seal

of Remainder.

The words must be sufficient in Law to may not be bind the parties: as if a man grant omnes ter midnic. rascerta sua, a Lease for years passeth no but for Franktenement, at least nec per omnil bona sua.

Exceptio semper ultimo ponenda est.

The Habend' must include the Premisses.

A Condition cannot be referved but by Jury hall the Grantor, and it is proper to follow the bery, but Habend' presently.

The Habend' or Condition must not be hbeardare. repugnant to the Premisses, if it be it is void and the Deed will take effect by the Pre Diverfuy in a misses.

A Warrant is good although it extend no unto all the Lands, nor to all the Feoffees, of this Deliver made by one of the Feoffors.

If it be razed or interlined in the Date, of foithall bit in any material place, it is very fuspicious. I thefam.

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Of Sealing.

A Writing cannot be faid to be a Deed if umstances, and it be not sealed, although it be written and delivered; it is but an Escrow.

but to him a And if it were fufficiently sealed, yet if the xceptit be by print of the Seal be utterly defaced, the Deed

is infufficient, it is not my Deed.

fficient in Lat It may not be pleaded, but it may be given an grant omne win Evidence.

Of Delivery.

A Deed taketh effect by the Delivery, no ponendaes, and if the first take any effect, the second is

referved by A Jury shall be charged to enquire of the oper to follow Delivery, but not of the Date; yet every Deed shall be intended to be made when it ition must medoth bear date.

> Diversity in delivering of a Writing as a Deed or Escrow.

This Delivery ought to be done by the party himself, or by his sufficient Attorney, ed in the Data and so it shall bind him whosoever wrote or very suspicion sealed the same.

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If one be bound to make Assurance, he need not to deliver it, unless there be one to read it to him before.

And if any Writing be read in any other form to a man unlearned, it shall not be his Deed although he seal and deliver it.

There are two forts of Deeds.

A Deed Polt, which is the Deed of the Grantor; a Deed Indented, which is the mutual Deed of either Parties. But in Law one is the Deed of the Grantor, and the other the Counter Part: and if any variance be in them, it shall be taken as it is in the Deed of the Grantor; and if the Grantor seal onely it is good.

CHAP. XXX. Bargains and Sales.

Hereditaments can pass, alter, or change from one man to another, whereby an Estate of Inheritance or Freehold is made, or taketh essect in any person or persons, or any use thereof is made, by reason onely of any Bargain and Sale therefore, except the same

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ements, or on pass, alter, other, where reehold is mad n or perions, reason onely ore, except to fame be made by Writing indented, fealed, and involled in one of the Courts of Record at Westminster, or within the same Court or County where the Tenements so bargained do lie, before the Custos Rotulorum and two Justices of Peace, and the Clerk of the Peace, or two of them, whereof the Clerk of the Peace to be one, and that within six moneths after the Date of such Writing indented, 27 H.8.

The Inrolment shall be indented the first day of the Term, and shall have relation to the delivery of the Deed against all stran-

gers.

CHAP. XXXI. FEOFFMENTS:

Feoffment is an Estate made by the delivery of Possession and Seizin by Party, or his sufficient Attorney.

A man cannot make Livery of Seizin be-

fore he have the Possession.

A Joynt Tenant cannot enfeoff his companion.

A copartner may make a Feoffment of his part, or releafe.

A man cannot enfeoff his Wife.

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A Diffeizor cannot enfeoff the Diffeizee; for his entry is lawful upon the Diffeizor.

Such persons as have possession in Lands for years or for life, &c. cannot take by Li-

very and Seizin of the fame Lands.

If a Feoffment be made, and the Lessee for years give leave to the Lessor to make Livery and Seizin of the Premisses, faving himself to his Lease, &c. and he doth, the Term is not surrendred, for the Lessee had an Interest which could not be surrendred without his consent to surrender, and here his intent to surrender doth not appear; wherefore he may enter and have his Term, and the Rent is renewed: but it is otherwise with a Lessee for life, and the Rent is extinct.

The Leffor cannot make Livery and Seizinagainst the will of the Leffee being on the Land; but he may grant the Revertion, and if the Lessee do attorn, the Freehold will pass without Livery of Seizin.

Livery of Seizin.

Livery of Seizin is a ceremony used in Conveyance of Lands, that the common people might know the passing or alteration of the Estate. It is requisite in all Feossments,

Gifts,

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Gifts in Tail, and Leafes for life, made by Deed or without Deed.

No Freehold will pass without Livery of Seizin, except by way of Surrender, Partition, or Exchange, or by matter of Record, or by Testament.

Livery of Seizin must be made in the lifetime of him that made the Estate.

Dona clandestina sunt semper superstitiosa.

By Livery of Seizin in one County the Lands in another County will not pass.

Livery within view is good, if the Feoffee do enter in the life time of the Feoffor.

Livery may not be made of a Estate to be given in futuro, for no Estate in Franktenement may be given in futuro, but shall take essect presently by Livery and Seizin.

Of Uses.

The Statute of 27 H.8. hath advanced Uses, and hath established Surety for him that hath the Use against the Feosfees: for before the Statute the Feosfees were Owners of the Land, but now it is destroyed, and the cestury que use is the Owner of the same: before the Possesson ruled the Use, but since the

the Use governeth the Possession. Indentures subsequent be sufficient to direct the Uses of a line or Recovery precedent, when no other certain and full Declaration was made before.

ATTORNEY.

An Attorney ought to do every thing in the name, and as the act of him which gave him the Authority; as Leafes in name of the Lessor, but he must fay, By vertue of his Letter of Attorney I do deliver you Possession and Seizin of, &c. for, &c.

An Attorney must first take possession be-

fore he can make Livery of Seizin.

If an Attorney do make Livery of Scizin otherwise then he hath Warrant, then it is a Disseizin to the Feossor.

An Attorney must be made by Writing fealed, and not by Word.

CHAP. XXXII. EXCHANGE.

I N Exchange both the Estates must be equal: there must be two Grants, and in every Grant mention must be made of this word Exchange.

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Tion. Indenture It may be done without Livery of Seiirect the Ulas zin if it be in one Shire, or else it must be t, when no othe done by Indenture, and by this word Exwas made be change, or else nothing passeth without Li-

Exchange importeth in the Law a Condition of Re-entry, and a Warranty Voucher, every thing and Recompence of the other Land that was nim which a given in exchange. An Affignee cannot res in name of the enter, nor vouch, but rebate; Exchanger ertue of his la may re-enter upon an Assignee. And the you Possessi same Condition deseated in part is deseated in the whole. And the fame Law is in Par-

CHAP. XXXIII. GRANTS.

Rants must be certain. A Grant to J.S. or J.N. is void for the incertainty, although it be deliverd to J.S. the delivery of the Deed will not make a void Grant good, or to take effect.

The Lord cannot grant the Wardship of states must be his living Tenant, because of the incertainty Grants, and who shall be his Heir, unless he name some

When

When any thing is granted that is not certain, as one of my Hories, then the choice is in the Grantee.

When several things are granted, then it is in the choice of him that is to do the first act.

A man cannot charge or grant that which he never had.

A man may charge a Reversion.

A Parson may grant his Tithes, or the

Wooll of his Sheep, for years.

A thing in Action, a Cause of Suit, Right of Entry, or a Title for a Condition broken, or such like, may not be given or granted to a stranger, but onely to the Tenant of the Ground, or to him that hath the Reversion or Remainder.

A thing that cannot begin without a Deed may not be granted without a Deed; as a Rent-charge, Fair, &c. Every thing that is not given by delivery of Hands, must be passed by Deed. The Right of a thing real or personal may not be given in nor released by word. A Rent of Condition or Re-entry may not be reserved to one that is not Party to the Deed.

All things that are incident to others, pass by the Grant of them that they are incident unto.

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A man by his Grant cannot prejudice him that hath an elder title.

If no Estate be expressed in the Grant, and ted, then Livery and Seizin be made, then the Grantee hath but Estate for life: but if there be such words in the Grant, which will manifest the will of the Grantor, fo his will be not against the Law, the Estate shall be taken according to his intent and will.

All Grants shall have a reasonable construction, and all Grants are made to some purpose, and therefore Reason would they should be construed to some purpose.

All Grants shall be taken most strong against him that made it, and most beneficial to him to whom it is made.

To Grants of Reversion or of Rents, &c. there must be Attornment, otherwise nothing passeth, if it be not by matter of Record.

ATTORNMENT.

Attornment is the agreement of the Tenant to the Grant by writing or by word; as to fay, I do agree to the Grant made to you, or I am well contented with it, or I do attorn unto you, or I do become your Tenant, or I do deliver unto the Grantee a Peny by way of Seizin of a Rent, or pay, or do but but one Service onely in the name of the whole, it is good for all.

It must be done in the lifetime of the

Grantor.

Without Attornment a Signory, a Rentcharge, a Remainder, or a Reversion; will not pass but by matter of Record.

Without Attornment Services pass not by the sale of the Manor, nor from the Manor

but by bargain and fale inrolled.

Attornment must be made by the Tenant of the Freehold, when a Rent charge is granted.

By the Attornment of the Termorto the Grantee of a Reversion, with Livery, and the Rent also, though no mention be made thereof. Before Attornment a man may not distrain, nor have any Action of Waste.

By Fine the Lord may have the Wardship of the Body and Lands, before the Attorn-

ment of his Tenant.

The end of Attornment is to perfect Grants, and therefore may not be made upon condition or for a time.

A Tenant that is to perfect a Grant by Attornment cannot confent for a time, nor upon a condition, nor for part of a thing granted; but it shall enure the whole absolutely.

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If the Tenant have true notice of all the Grant, then such Attornment is void.
Attornment necessary upon a Devise.

CHAP. XXXIV. LEASES.

Lease for years must be for time certain, and ought to express the Term, and when it should begin, and when it should end certainly. And therefore a Lease for a year, and so from year to year during the life of J.S. but for two years it may be made by word or writing. If I lease to J.N. to hold untill 100 l. be paid, and make no Livery of Seizin, he hath Estate onely at will.

A Lease from year to year, so long as both the parties please, after Entry in any year it is a Lease for that year, &c. till warning be given to depart, 14 H.8.16.

A Leafe beginning from henceforth shall be accounted from the day of the Delivery; from the making shall be taken inclusive from the day of the making, or of the Date exclusive.

If Lands discend to the Heir before his Entry, he may make a Lease thereof.

A man lets a House cum pertin', no Lands pass: but if a man let a House cum omnibus terriseidem pertin', there the Lands therunto

used pass.

If a man lets Lands wherein are Cole Mines, Quarries, and such like, if they have been used the Tenant may use them if they be not open; if the Tenant for them imploy them not on the Land, it is Waste: likewise Marl. The Land is the place where the Rent is to be paid and demanded, if no other place between the parties be limited.

Trespass is not given for paying of the Rent to the Lessor, how soever it be payable

there.

And if a man let Lands without Impeachment of Waste, and a stranger cut down the Trees, and the Lessee doth bring an Action of Trespass, he shall not recover for the value of the Trees, but for the Crop and bursting of his Close, and the Heir of the Lessor shall have such Trees, and not the Executor of the Lessee, unless they be cut by the Lessee, and enjoyed by the Grantee without Waste.

Leffee for years or for life, Tenant in dower or by the courtefie, or Tenant in tail after possibility, &c. have onely a special interest or property in the Trees, being upon the Ground Ground
the Land
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Tenant in domant in tail after fpecial interest ing upon the Ground Ground growing as a thing annexed unto the Land, fo long as they are annexed thereunto.

But if the Lessee or any other sever them from the Land, the property and interest of the Lessee in them is determined, and the Lessee in them as things that are parcel of his Inheritance, the Interest of the Lessee being determined.

To accept the Rent of a void Lease will not make the Lease good, but avoidable it

Will.

If the Husband and Wife do purchase Lands to them and their Heirs of the Husband, and he make a Lease, and die; his Wife may enter, and avoid the Lease for her life: but if she die, leaving the Husband, who asterward dies before the term ends, the Lease is good to the Lesse against the Heir.

Where it is covenanted and granted to **7.S.** that he shall have 5 Acres of land in D for years, this is a good Lease, for concessit is

of fuch force as dimisit.

If a man make a Lease for 10 years, and afterwards maketh another Lease for 21 years, the later shall be a good Lease for 11 years, when the first is expired.

If the Leffee at his cost do put Glass into the Window, he may not take the same away

again,

again, but he shall be punished for Waste: and so of Wainscot and Seeling, if it be not fixed with Screws.

Tenant in Tail may make a Leafe for fuch Lands or Inheritance, as have been commonly letten to farm, if the old Lease be expired, furrendred, or ended, within one year after the making of the new; but not without Impeachment of Waste, nor above 21. years, or 3 lives, from the day of the making, referving the Old Rent or more, 32 H.8. by Indenture of Leafe, by Tenant in Tail, for 21 years, made according to the form of the Statute, rendring the ancient or more Rent: if the Tenant in Tail die, it is a good Lease against his Issue: but if a Tenant in Tail die without Issue, the Donor may avoid this Lease by Entry, 32 H.8.28. And if he in the Remainder do accept the Rent, it shall not the him, for that the Tail is determined, the Lease is determined and void, Ed.6.19.

The Husband may make such a Lease of his Wifes Lands by Indenture, in the name of the Husband and Wife, and she to seal thereunto, and the Rent must be reserved to the Husband and his Wife, and to the Heirs of the Wife, according to her Estate of Inhe-

ritance.

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uch a Leafe of , in the name nd she to feat be reserved to d to the Heirs Estate of InheReferbations and Exceptions. 69

A Lease made by the Husband alone, of the Lands of his Wife, is void after his death; but the Lessee shall have his Corn.

By the Husband and Wife voidable, if it be

not made as aforesaid.

If a man do let Lands for years, or for life, referving a Rent, and do enter into any part thereof, and take the profit thereof, the whole Rent is extinguished, and shall be suspended during his holding thereof.

The acceptation of a Re-demise to begin presently, is suspension of the Rent before any Entry: otherwise of a Re-demise to be-

gin in futuro.

Reservations and Exceptions.

There are divers words by which a man may referve a Rent, and such like, which he had not before, or to keep that which he had, as tenendum, reservandum, solvendum, faciendum, it must be out of a Mesuage, and where a Distress may be taken, and not out of a Rent, and must be comprehended within the purport of the same word.

Exceptions of part ought always to be of fuch things which the Grantor had in posses-

fion at the time of the Grant.

The

70 Refervations and Exceptions.

The Heir shall not have that which is referved, if it be not referved to him by special words.

If a man make a Feoffment of lands, and referve any part of the profits thereof, as the Grafs or the Wood, that Refervation is void, because it is repugnant to the Feoffment.

A man by a Feoffment, Release, Confirmation, or Fine, may grant all his right in the land, saving unto him his Rent charge, &c. Things that are given onely by taking and using as Pasture for four Bullocks, or two loads of Wood, cannot be reserved but by way of Indenture, and then they shall take effect by way of Grant of the Grantor, during his life and no longer without special words.

Exceptions of things, as Wood, Mines, Quarry, Marl, or fuch like, if they be used, it is implied by the Law that they shall be used; and the things without which they cannot be had, is implied to be excepted, although no, &c.

But otherwife, if they be not used, then the

way and fuch like must be excepted.

An Assignee may be made of lands given in Fee, or for life, or for years, or of a Rentcharge, although no mention be made of the Assignee in the Grant. But otherwise Grant or War, Ita leffee do far may charge usure.

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Referentions and Exceptions. 71

But otherwise it is of a Promise, Covenant,

or Grant or Warranty.

If a leffee do affign over his term, the leffor may charge the leffee or affign at his

pleafure.

But if the leffor accept of the Rent of the Assignee, knowing of the Assignment, he hath determined his acceptation, and shall not have an Action of Debt against the lessee, for Rent due after the Assignment.

If after the Assignment of the lessee the leffor do grant away his Reversion, the Grantee may not have an Action of Debt against

the leffee.

If a leffee do affign over his Interest and die, his Executor shall not be charged for Rent due after his death.

If the Executor of a leffee do affign over his Interest, an Action of Debt doth not lie against him for Rent due after the Assign-

ment.

If the leffor enter for a Condition broken, or the leffee do furrender, or the Term end, the lessor may have an Action of Debt for the

Arrearages.

A leafe for years rendring Rent, with a Condition, that if the leffee affigneth his term, the leffor may re-enter. The leffee affigneth, the leffor receiveth the Rent of the hands of

the

72 Referbations and Exceptions.

the Assignee, not knowing of the Assignment, it shall not exclude the Lessor of his Entry.

A thing in a Condition may be affigned over for good cause as just debt: as whereas a man is indebted to me 20 l. and another do owe him 20 l. he may assign over his Obligation unto me in satisfaction of my Debt, and I may justifie the suing for the same in the name of the other at my own proper costs and charges.

Also where one hath brought an Action of Debt against J.N. which promiseth me that if I will aid him against J.N. I shall be paid out of the summe; in demand I may aid him.

An Affignce of Lands if he be not named in the Condition, yet he may pay the money to fave his Land.

But he shall receive none if he be not named: the tender shall be to the Executor of the Feoffees.

Assignce shall always be intended, he that hath the whole Estate of the Assignor, that is assignable. A Condition is not assignable, and not of an Executor or Administrator. If there be such an Assignce, the Law will not allow an Assignce in the Law, if there be an Assignce indeed: so long as any part of the Estate remaineth to the Assignor, the tender ought to be made to him or his Heirs, it serveth: yeta

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he Assignment to the Heir shall not vest of his Entry the Estate out of the Assignee, as a true payay be asign ment will, viz. Covenant. bt: as where

CHAP. XXXVI. SURRENDERS.

A Surrender is an Instrument testifying with apt words, that the particular ght an Adim Tenant of Lands or Tenements, for life or omiseth med years, doth sufficiently consent, that he which . I shall be nath the next immediate Remainder or Re-I may aid ver sion thereof, shall also have the particular e be not not Estate of the same in possession; and that he pay the mod vieldeth or giveth the same to him for ever. surrender ought forthwith to give a present the benot possession of the thing furrendred unto him he Executed which hath fuch an Estate, where it may be frowned.

ended, het A Joynt Tenant cannot furrender to his

affignables Estating of things that may not be granted strator. If in vithout a Deed, may be determined by the will not all jurrender of the Deed to the Tenant of the

the Estates Lease for years cannot surrender before ender ought is term begin; he may grant, he cannot ferreth: yel irrender part of his Leafe.

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Surrenders are in two manners, in Deed, at the tit in Law.

A Surrender in Law is when the Leffee to hoveth his for years doth take a new Lease for more a nand Pri

years.

A Surrender in Deed must have sufficient for his Entry words to prove the affent and will of the man may Surrenderer to furrender, and that the other or for tin do also thereunto agree.

The Husband may furrender his Wifes to Release Dower for his life, and her Leafe for ever. h pit is mad

By Deed indented a man may furrender of Exting upon Condition.

CHAP. XXXVII. RELEASES.

A Release is the giving or discharging of the, yet all a Right or Action, which a man hath a hepurch or claimeth against another, or out of or in a the Rent his Lands.

A Release or Confirmation made by him to the that at the time of the making thereof had a tine. no right, is void: if a right come to him af Release t terwards, unless it be with Warranty, and hese wo then it shall bar him of all right that shall Estatehe come to him after the Wrrranty made. Re-

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Release or Confirmation made to him ners, in Deal that at the time of the Release or Confirmaion made had nothing in the lands, is void, when the list behoveth him to have a Freehold or a Pos-Leafe for a deffion and Privity.

A Release made to a Lessee for years be-

t have suffine pore his Entry is void.

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and will of A man may not release upon a Conditid that thee in, nor for 'time, nor for part; but either he Condition is void, and the Time is void, ender his I and the Release shall enure to the party to Leafe for end shom it is made for ever, for the whole, by n may fund hay of Extinguishment. But a man may dewer a Release to another as an Escrow, to eliver to J.S. as his act and deed, if J.S. operform such a thing: or Release upna Condition by Deed indented, may be lood.

A Joynt Tenant or a Rent-charge may or discharga clease, yet all the Rent is not extinct, nor which a man let if he purchase the lands, his Fellow shall , or out of lave the Rent still.

If the Grantee release parcel of a Renton made by harge to the Grantor, yet all the Rent is

come to he A Release to charge an Estate ought to Warranty, ave these words, Heirs, or words to shew right that that Estate he shall have.

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king thereof ot extinst. anty made.

XVII.

ES.

A Release made to him that hath a Relege in Fee, version or a Remainder in Deed, shall serve from the sar and help him that hath the Franktenement: herry may fo shall a Release made to a Tenant for Life Has Confin or a Tenant in Tail, inure to him in the Rel 1900d. version or Remainder, if they shew it; and Confirma fo to Trespassors and Feosfors, but not the determin Diffeizors.

A Release of all manner of Actions dott not take away an Entry, nor the taking ones Goods again, nor is any plea again

an Executor.

A Release of all Demands extinguished all Actions real and personal, Appeals, Exe cutions, Rent-charge, Common of Pasture Rent fervice, and all Right and Seizure, and all right in Lands and property in Chattels: bu not a possibility or future duty, as a Ren payable after my death, and fuch like.

CHAP. XXXVIII. CONFIRMATION.

Onfirmation is when one ratifieththe Possession, as by Deed to make his Pol be voidate fession perfect, or to discharge, his Estate ofe. that may be defeated by anothers Entry.

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XXXVIII.

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As if a Tenant for life will grant a Rent harge in Fee, then he in the Reversion may onfirm the same Grant: whereas a man by is Entry may defeat an Estate, there by his de to a I must beed of Confirmation he may make the Enure to him in the good.

A Confirmation cannot charge an Estate hat is determined by express Condition or imitation. To confirm an Estate for an hour, manner of Attons it be for Tenant for life, it is good for life; to Tenant in fee, for ever.

nor is any plea A Lease for years may be confirmed for a me, or upon condition, or for a piece of the Denands ening and : but if a Franktenement-be, it shall enpersonal, Appeal re to the whole absolutely.

A Confirmation to charge an Estate, must Right and Seizur ave words to shew what Estate he shall

funreduty, To confirm the Estate of Tenant for life esth, and fuch lit his Heirs, cannot be but by Habend', the and to him and his Heirs: and therefore it good to have fuch an Habend' in all Conrmations.

MATION Ina Confirmation new Service may not be

eferved, and old may be abridged.

when one IM A Confirmation made to one Diffeizor. v Deed to mitted pall be voidable to the other; fo shall not a

> CHAP. E 3

CHAP. XXXIX.

Here are two manners of Conditions, the which one expressed by words, another implied by the Law; the one called a Condition in Deed, the other a Condition in Law.

Estate made, and the Condition against the Law, the Estate's good, the Condition's void.

If the Estate beginneth by the Condition, ithe Oblighthen both are void.

Bonds with Conditions expressly against the Law are void.

Conditions repugnant, the Estate good, idoit, there the Conditions void.

Conditions impossible are void, the Estate good: it shall not enlarge any Estate.

By pleading a man may not defeat an E-state of Franktenement, by force of a Condition in Deed, without he shew the Condition of Record, or in writing fealed; yet the Jury may help a man where the Judges will take their Verdict at large: of Chattels he may.

Promise doth make a Condition, but when it doth depend upon another Sentence, or hath reference to another part of the Deed,

maketh no limitation of the Deed, a Grantee fill He which I y fulfill the Between the adition be r

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it maketh no Condition, but a qualification or limitation of the Sentence, or of that part of the Deed, as provided that the person of the Grantee shall not be charged.

He which hath Interest in a Condition sanother in may fulfill the same for safeguard of himself.

Between the parties it is not requifite the Condition be performed in every thing if the nditionagair other do agree: but to a stranger it must.

If the Obligee be party to any A& by which the Condition cannot be performed, the Condit then the Obligor shall be discharged: so he shall be by the Act of the Condition.

Where the first A& in the Condition is to be performed by the Obligee, and he will the Estate not do it, there the Obligation is not forfeited.

Where no time is fet, if the Condition be any Elate for the good of a stranger, or of the Obligee, not defeat then it is to be performed within convenient oy force of time, if for the good of the Obligor at any then then time during their lives; immediately shall iting sealed; not have such a strict construction, but that where the it shall suffice if it be done in convenient

If a man be bound tn pay Money, or farm ndition, but Rent, he must feek the parties: but if he be per Sentence, bound to perform all payment, if he render art of the De his Farm on the land it sufficeth.

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If the Feoffee or Feoffor die before the day of payment, the tender shall be to the Executor, although the Heir of the Feoffee do enter, if the Heir be not named. Vide Affignee in Affignment.

The money must be tendered so long before Sun set, that the Receiver may see to

tell it.

To pay part of a Summe at the day cannot be fatisfaction for the whole Summe; as a Horse or a Robe is But before the day, or at another place, at the day of the request, and acceptance of the Obligee, is full satisfaction.

An Acquittance is a good bar if nothing be

paid.

In all cases of Conditions a payment of a certain Summe in gross, touching Lands or Tenements, if lawful tender be once resused, he which made the tender is discharged for ever.

And the manner of the tender and payment shall be directed by him that made it, and not by him that did accept it, as that he paid the Summe in full satisfaction, and that he accepted thereof in full satisfaction.

An Acquittance is a good bar, &c.

Where a man is bound to pay money to make a Feoffment, or renounce an Office, or the like, and no time is limited when he shall do

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tie before do it, then upon request he is bound to perhall be to form it in fo short a time as he may.

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ready to perform it at the day.

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Where a Covenant or Condition is to ver may see marry or enfeoff a stranger by such a day, the refusal of the stranger is no plea, as that the day can of the Obligee is. The Obligee is to be ready on the Land at his own peril; a stranger etheday, must be requested; if he refuse, the Obligae requelt, a tion is forfeited: wherefore it is good to iull satisfacti have these words, If the stranger do thereunto parifnothing affent.

Entry.

The Determination of an Estate is not ef-

fccted before Entry.

When any person will enter for a Condition broken; he must be seized on the same courfe and manner he was when he departed from his Possession.

It behoveth fuch persons as will re-enter upon their Tenants to make a demand of the Rent.

If the Leffor demand before he die, his Heir may enter.

If the Lessor distrain he may not re-enter.

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The Lessor may accept of the Rent, and yet re-enter: but if he receive the next Rent, he may not, for that establisheth the Lease.

Entry into one Acre in the name of more is good: it doth not extend into two Counties,

By the Entry of the Husband the Franktenement shall be in the Wife: and so of such

like.

In Gavilkind Land the eldest Son onely shall enter for the breach of a Condition.

DEMAND.

The Land is the place where the Rent is to be paid and demanded, if there be no other

place appointed.

And there the Lessor himself, or his sufficient Attorney, a little before Sun-set, in the presence of two or three sufficient Witnesses shall say, Here I demand of J.B. 10 l. due to me at the Feast of, &c. for a Mesuage, &c. which he boldeth of me in Lease by Indenture, &c. and there remain the last day the Rent is due to be paid, untill it be so dark that he cannot see to tell the Money.

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CHAP. XL. WARRANTIES.

THere are three manner of Warranties, Lineal, Collateral, By Difcent.

Warranty Lineal is where a man by his Deed bindeth him and his Heirs to Warranty, and dieth, and the Warranty doth difcend to his Issue.

Warranty Collateral is in another line, for that he to whom it discendeth cannot convey the Title that he hath in the Testaments by him that made Warranty.

Warranty by Disseizin is where he which hath no right to enter entereth, and maketh a Warranty: this is by Disseizin, and barreth not.

Lineal Warranty barreth him that claimeth Fee, and also Fee Tail with Assets in Fee; if he sell his Son may have a Formedon.

Collateral Warranty is a Bar to both, except in some cases that be remedied by Statute, as Warranty by Tenement, by the Courtesie, except he hath enough by Discent by the same Tenement.

Tenant.

TENANT

In Dower for life, not remedied, but do bar the Heir and him in Reversion.

A Warranty discendeth always to the Heir at the Common Law, viz. the eldest Son, and followeth the Estate, and if the Estate may be deseated, the Warranty may also.

It barreth not the second Son in Gavilkind, although all the Sons shall be vouched, and not the eldest Son alone: yet he onely shall be barred.

To plead a Warranty against him that made it or his Heirs, is called a Rebutter.

Where Fee or Franktenement is warranted, the party shall have no advantage if he be not Tenant.

Where a Lease for years is warranted, it shall be taken by way of Covenant, and good if he be outed.

The Feoffor by the words of dedi & conceffi shall be bound to Warranty during his own life.

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CHAP. XLI. COVENANTS.

Ovenants are of two forts, expressed by ways to the words in the Deed, or implied by the z. the elde Law. A Covenant in Deed is an Agreement e, and it made by the Deed in writing between two 'arranty persons, to perform some things and sealed: for no Writ of Covenant is maintainable on in Gall without fuch a Specialty but in London, be youched Ge.

When a Covenant doth extend to a thing in being parcel of the Demise, or thing to be inst him to done by force of the Covenant is quodammo-Rebutter. do annexed, or appertaining to the thing deit is warra mised, and goeth with the Land, it shall bind vantage if the Assignee if he be not named: as to repair the Houses, it shall bind all that shall warranted, come to the same by the act of the Law, or nt, and god by the act of the Party.

But if the Covenant do concern the Land, dedi & or thing demised in some fort, the Assignee y during fhall not be charged although he be named; asto make a Wall at another bodies House, or to pay a Summe of Money to the Lessor or to a stranger; but the Lessee his Executors and Administrators shall be charg-

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If the Covenant do extend to a thing that hall Bar had no being, but to be made new upon dAgreen the land, it should bind the Assignee if he esently, be named, because he shall have the benefit spaymen of it.

If a man make a lease for years, and the Haman leffee covenanteth and granteth to pay, &c. wynot ca to the leffor, his heirs and affigns, yearly during, &c. ten pounds, his Executors shall mhim to have it.

A Covenant in Law upon a Demise or will he be Grant, the Affignee in deed or in law may kethem, t have a Writ of Covenant.

An Obligation to perform all Covenants loney at hi and Grants is forfeit on the breach of a Co- Ifthe bar venant in law.

A Covenant in law is not broken but by learnest, an elder title.

A Covenant in law may be qualified by the mutual consent of the parties.

CHAP. XLII.

How Chattels Personal may be bargained, sold, exchanged, lent, and restored.

Contract is properly where a man for your Mo his Money shall have by the affent of all have another certain Goods, or some other profit at the time of the Contract, or after.

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In all Bargains, Sales, Contracts, Promises, and Agreements, there must be quid pro quo presently, except day be given expresly for the payment, or else it is nothing but Communication.

If a man do agree for a price of Wares, he may not carry them away before he hath paid for them, if he have not day expresly gi-

ven him to pay for them.

But the Merchant shall retain the Wares untill he be paid for them; and if the other take them, the Merchant may have an Action of Trespass or an Action of Debt for the Money at his choice.

If the bargain be that you shall give me 10 l. for my Horse, and you do give me 1 d. in earnest, which I do accept; this is a perfeet bargain, you shall have the Horse by an Action of the case, and I shall have the Mo-

ney by an Action of Debt.

If I say the price of a Cow is four pounds. and you fay you will give me four pounds, and do not pay me presently, you may not have her afterwards except I will, for it is no contract. But if you go presently to telling of your Money, if I fell her to another, you shall have your Action of the case against me:ii

ILII. be bargains and restored. where a man by the affect ome other pa or after.

If I buy an hundred loads of Wood to be taken in such a Wood at the appointment of the Vendor; if he upon request will not assign them unto me, I may take them, or I may fell them: but if a stranger do cut down any part of the Trees, I may not take them, but I may supply my Grantee of the residue, or

have my Action of the Cafe.

If the bargain be, that I shall give you to l. for such a Wood, if I like it upon the view thereof; this is a bargain at my pleasure upon my view: and if the day beagreed upon, if I disagree before the day, if I agree at the day, the bargain is perfect, although afterwards I do disagree. But I may not cut the Wood before I have paid for it; if I do, an Action of Trespass will lie against me, and if you sell it to another, an Action of Trespass on the case will lie against you.

If I fell my Horse for money, I may keep him untill I am paid; but I cannot have an Action of Debt untill he be delivered, yet the property of the Horse is by the bargain in the Bargainor or Buyer: but if he do presently tender me my money, and I do resuse it, he may take the Horse, or have an Action of Detainment. And if the Horse die in my Stable between the bargain and the delivery, I may have an Action of Debt for my

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money, because by the bargain the property

was in the Buyer.

If a Deed be made of Goods and Chattels, and delivered to the use of the Donce, the property of the Goods and Chattels are in the Donee presently. Before any Entry or Agreement the Donce may refuse them if he will.

If I take a Horse of another mans, and sell him, and the Owner take him again, I may have an Action of Debt for the money, for the bargain was perfect by the delivery of the Horse, & caveat emptor. Every Contract importeth in it felf an Assumption; for when one doth agree to pay money, or deliver a thing upon consideration, he doth as it were assume and promise to pay and deliver the fame, and therefore when one felleth any Goods to another, and agreeth to deliver them at a day to come: and the other in confideration thereof agreeth to pay fo much money on the delivery, or after; in this cafe he may have an Action of Debt, or an Action on the Case upon the Assumption.

The duty to refignan A Ition personal may not be apportioned: as if I fell my Horse and another mans for 10 l. who taketh his

Horse again, I shall have all the money.

If a man retained a Servant for 10 l. per an. and he depart within the year, he can have no wages: if it were to be paid at two Feasts, and the man after the first Feast die, he shall have wages but for the first Feast: therefore men take order for it in their Wills.

By a Contract made in a Fair or Market the property is altered, except it be to the King, so that the Buyer know not of the former property, and do pay Toll, and enter it: and those things as thereupon ought to be done, it must be on the Market, and at the place where such things are usually sold, as Plate at the Goldsmiths Stall, and not in his inner shop.

In exchange of a Horse for a Horse, or such like, the bargain is good without giving

of day or delivery.

If a thing be promised by way of recompence for a thing that is past, it is rather an Accord then a Contract; and upon an Accord there lieth no Account, but he unto whom the promise is made, may have charge by reason of the promise, which he hath also performed; then he shall have an Account for the thing promised, though he that made the promise hath no prosit thereby: as if a man say to another man, Heal such a poor man,

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man, or make fuch a High Way, &c.

The intent of the party thall be taken according to the Law, as if a man retain a Servant, and do not fay one year, or how long he shall serve him, it shall be taken for one year according to the Statute.

In all Contracts he that speaketh obscurely or ambiguously is said to speak at his own peril, and such speeches are to be taken

strongly against himself.

CHAP. XLIII. Of Lending and Restoring.

F Money, Corn, Wine, or suh other things, which cannot be re-deliver'd, be occupied on borrowed, if it perish, it is at the peril of the borrower.

But if a Horse or a Cart, or such other things, as may be used and delivered again, be used in such manner as they were lent, if they perish, he that oweth them shall bear the loss, if they perish not through the default of him that did borrow them, or that he did make a promise at the time of delivery to re-deliver them safe again. If they be occupied in any other wise then according to the lending, in what wise soever it perish; if it be

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t for 101.2 year, he a be paid at m first Feast d the first Feast or it in the

Fair or Mad pt it be to be to not of the ball, and enterion on ought to ket, and at to usually sold, and not in

or a Horse, without gin

way of recuit is rather and upon an At, but he was have changich he hathal ve an Account he that man hereby: as if I fuch a poor

92 Of Lending and Restoring.

be not in default of the Owner, he that did borrow them shall be charged with them in Law and Conscience.

If a man have Goods to keep a certain day, he shall be charged or not charged af-

ter as default or defaults are in him.

But if he have any thing for keeping them fafe, or make promife to re-deliver them, he shall be charged with all chances that may fall because of his promise.

If a man find Goods of another mans, if they be fourt or lost by the negligence of him that found them, he shall be charged to the

Owner.

If a common Carrier go by ways that be dangerous for robbing, and will drive by night, or other unfit times, and is robbed: or if he do overcharge his Horses, or driveth so that his Stuff fall into the water, or otherwise be hurt by his default, he shall be charged by his default

And if a Carrier would percase resuse to carry, unless a promise were to him, that he shall not be charged with any such misse-

meanour, that promise were void.

Every Inholder is bound by the Law bona & catalla of his Guest to keep in safety, so long as it is within the Inn, if the Guest did not deliver them unto him, nor acquaint him with them.

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percase result e to him, the any fuch min e void. by the Law

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He shall not be charged if the Servant or Companion of the Guest do imbezel them; or if the Guest do leave them in the outward Court.

The Horster shall not answer for the Horse that is put to pasture at the request of the Guest; but if he do it of his own head, he shall.

If any man offer to take away my Goods, I may lay my hands upon him, and rather beat him then fuffer him to take or carry them away.

CHAP. XLIV.

How far other Mens Contracts and Misdemeanors do bind us.

Man shall be bound by many Trespasses I of his Wife, but not to fustain corporal

punishment for it.

For Murder, Felony, Battery, Trespass, Borrowing or Receiving of money in his Masters Name by a Servant, the Master shall not be charged unless it be done by his command, or came to his use by his affent.

If I command one to do a Trespass, I shall, be a Trespassor, or otherwise if I do but consent. There is no Accessary in Trespass.

We shall be charged if any of our Family lay or cast any thing into the High Way, to the noisance of His Majesties Liege People.

Every man is bound to make recompence for such hurt as his beasts shall do in the Corn or Grass of his Neighbour, though he knew not that they were there; and for his Dogs, Bears, &c. if they hurt the Goods or Chattels of any other, for that he is to govern them.

A man shall not be charged by the Contrast of his Wife or his Servant, if the thing come to his use, having no notice of it. But if he command them to buy, he shall be charged though they come not to his use, or had notice thereof.

If a Wife or Servant use to buy or sell, if he sell his Masters Horse, and exchange his Ox for Wheat that cometh to his Masters use, his Master may not have an Action of Trespass for it, but he shall be charged for the Corn, and the other need not to shew that he had Warrant to buy for him.

If a man-fervant that keepeth his shop, or that useth to sell for him, shall give away his Goods, he shall have Trespass against the Donee.

But if I deliver my Goods to another to keep to my use, and he do give them away, I

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shall not; for the Donee had notice whose Goods they were, as in the case of the Servant.

If a man make another his general Receiver, which receiveth money, and maketh an Acquittance, and payethnot his Master, yet that payment dischargeth the Debtor.

If a Servant keep his Masters fire neglitheistograf gently, an Action lieth against the Master: otherwise if he bear it negligently in the

ant, if the If I command my Servant to distrain, and tice of it by he doth ride on the Distress, he shall be pushall be charge nished, not I.

If a man command his Servant to fell a thing that is defective, generally to whom buy or let he can fell it; Deceit lieth not against him: d exchange otherwise if he bid him sell it to such a man,

A Contract or a Promise made to the wife be charged is good, when the husband doth agree: fo ed not to m it is to a Servant; and it shall be faid to be or him. made to the husband and mafter himself.

eth his shop If a man taketh a Wise that is in debt, he give away fhall be charged with her debts during her is against life; if she die, he shall be discharged.

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CHAP. XLV. Wills and Testaments.

Aving hitherto treated of fuch Con- hing, whi tracts as do take effect in the life time gath of the of the Parties, with their differences, it is now to deal with Instruments which take Will of effect after their deaths, that those things mamed: which they have preserved with care, & gotten with pains in their life, might be left to 1, or col their Posterity in peace and quietness, after their death: of which fort are last Wills and MEXECU Testaments.

There are two forts of Wills, Written and Nuncupative.

A Nuncupative Testament is when the Te- adsholder flator doth by Word onely without Writing the in w declare his Will before a fufficient number, parts in th of his Chattels onely; for Lands pass not ar, Fraud, but by Writing. It may for the better con- 15 to be at tinuance after the making be put in Wri- Woman m ting, and proved: but it is still a Testament Husband Nuncupative.

A written Testament is that, which at the as Execut very time of the making thereof is put in annot give writing, by which kind of Testament in wri-

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ting onely Lands and Tenements pass, and not by word of mouth onely.

Two things are required to the perfection of a Will by which Lands pass, viz. first, ed of such Writing, which is the beginning; secondly, A inthelife the death of the Devisor, which is the finish-

ents which: In a Will of Goods there must be an Executat those the cutor named: otherwise of Lands.

with care, A man may make one Executor or more might bek simply, or conditionally for a time, or for d quietness parcel of his Chattels.

arelast Will If no Executor be named, then it still retaineth the name of a last Will, and shall be annexed to the Letters of Administration in Ils, Writtenal regard of the Gift.

Gavilkind Lands may be devised by Cu-

tom.

ntiswhenth Lands holden in Soccage tenure are all without We levisable in writing, but Knights Service sufficient nu wo parts in three.

Lands past Fear, Fraud, and Flattery, three unfit ac-

r the better idents to be at the making of a Will.

be put in A Woman may make a Will of the Goods Aill a Tell of her Husband by his confent and licence: by word is sufficient, and of the Goods she nat, which at lath as Executor without his confent; but thereofism he cannot give them unto him.

A Boy after his age of Fourteen, and a 10 Frankte Maid after her age of Twelve, may make a Will of their Goods and Chattels by the Civil Law.

The Will of the Donor shall be always ob a hall have ferved, if it be not impossible, or greatly con there.

trary to the Law.

A Devisor is intended inops consilii, and we the na the Law shall be his Counsel, and according a levise. to his intent appearing in his Will, shall sup it man dev ply the defect of his words.

A Prerogative Will is 5 l. in another Dio le he hath

cefe.

A man may not traverse the Probate of all man de Testament, or Letters of Administration did which he rettly, but he may fay against the Testament of er his per that the Testator never made the party had if a ma Executor.

CHAP. XLVI. DEVISES.

Devife ought to be good and effectual to the Mo at the time of the death of the Devisor. warden The Devisee may not enter into the term leis great or take a Chattel, but by the delivery of the eviled; Executor.

But he may fue for it in Court Christian le Occup

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ourteen, and Into Franktenement or Inheritance he may

attels by the Devisees are Purchasees: as if a Lease for ears be willed to a man and his Heirs, the all be always leir shall have it; for Heir is a name of Pur-

A Reversion of Lands or Tenements will inops conflinates by the name of Lands and Tenements

, and accord a Devise.

S Will, stall Is a man devise all his Lands and Teneents; a Lease for years doth not pass l, in another here he hath Lands in Fee, and also a Lease here, otherwise it will.

the Probate Is a man devise all his Goods, a Rent-Administrate arge which he had for years will pass, and other his personal Chattels.

de the part And if a man give all his Moveables to be, he shall have all his Horses, Cattel, Pans, d personal Chattels; and all his Immovebles to another, he shall have all his Corn lowing, and Fruit on his Trees, and the hattels real.

A man may devise Lands or Goods to and ood and the mant in the Mothers belly, or Goods to the th of the De hurchwardens of D.

terinto the There is great diversity where the properhe delivery is devised; and when the Occupation is evised a man may devise, that a man shall Court Christ we the Occupation of his Plate, or other

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Chattels during his life or for years, and if it ithou he die within the term, that it shall remain to a she w M.A. and it is good; for the first hath but to pholo the occupation, and the other after him shall Will e lord E have the property.

Deviles.

But if a Chattel be given to one for life, at ind hi the Remainder to another, the Remainder if e Tail

void.

For a Grant or Devise of a Chattel for ands, hour is good for ever, and the Devisee may e feir: dispose of it; but if he do not, the other the HtifLa shall have it.

A man may devise his Lands he holder and the in Lease, but not his Lease, under this conder own zion; provided that if the Devisee die with le tim A Execu

in the term, then he shall have it.

If a man will his Goods to his Wife, and I ands that after her decease his Son and Heir shale for y have the House wherein they are; she sha mr Tit have the House for term of her life, yet it le Co not devised unto her by express words. But ogniz it doth appear that his intent was fo by the lown. words.

If a man willeth his Lands to his Wife the s not his Son cometh to the Age of 21 years, and in the the Woman taketh another Husband at dieth, the Husband shall have the Inte-

eft.

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ent was for Corn fown.

her Husband I have the

By a Devise a man may have the Fee Simfor years, a sle without express words of Heirs: as if tithall rend lands be willed to a man for ever, or to have the first had not to hold to him and to his Affigns, &c.

her after him By Will Lands may be entailed without he word Body: as if Lands be given to a n to one for man and his Heirs male, it doth make an

If a man will that his Executors shall fell of a Chattell his Lands, the Inheritance doth descend to the Devilat he Heir: yet the Executors may enter and do not, the enfeoff the Vendee.

But if Lands be given to the Executor to Lands he lell, and they receive the profits thereof to e, underthis heir own use, and do not sell the same in rea-Deviseed onable time, the Heir may enter.

have it. AnExecutor may fell if the others will not. s to his Wal If Lands be recovered against Tenant for Son and He life or for years, by an Action of Waste or hey are; hormer Title, he may not give his Corn.

of her life, If the Cognizee have fown the Lands, and xpress word the Cognizor bring a Scire, he may give the

If a man devise omnia bona & catalla, ds to his W Hawks nor Hounds do not pass, nor the e of 21 years Deer in the Park, nor the Fish in the Ponds.

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CHAP. XLVII. EXECUTURS.

N Executor is he that is named and and a be pointed by the Testator to be his Such do r ceffor in his stead to enter, and to have his Goods and Chattels, to use Actions again that his Debtors, and Legacies fo far as his Good and Chattels will extend.

Where two Executors are made, and on the fir doth prove the Will, and the other dother o Debt, fuse, notwithstanding he that refuseth me the Good administer at his pleasure, and the other mil a Execution name him in every action for every dunce, &c. due to the Testator, and his Release shall & The I a good bar. If he do furvive he may admir by the I fter, and not the Executor of him that die with but otherwise if all had refused. Pribate.

If one prove the Will in the name of both [he] he that doth not administer shall not be cha! A tions.

ged.

If the Executor do once any action that the Bod proper to an Executor, as to receive the Te lice, stators Debts, or to give Acquittance for my rs, ar same, &c. he may not resuse.

But other acts of Charity or Humanity of In up may do, as to dispose of the Testators Good Jerels, 1 about the Funeral, to feed his Cattel lest the Qods a

XLVII. URS.

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rs are made, al d the other di e that refuled re, and the other tion for even his Release rvive he may a or of him the refused. in the named

nce any actions as to received Acquittancell esule.

fer shall not a

rity or Human the Testators d his Cattelled

perish, or to keep his Goods lest they bestolen: these things may every one do without danger.

When Executors do bring an Action it natis nameda shall be in all their names, as well of them

tator to be that do refuse as of others.

But an Action must be brought against him that doth administer onely, and he which s fo far as his first cometh shall first answer.

An Executor of an Executor is Executor to the first Testator, and shall have an Action of Debt, Accompt, &c. or of Trespais, as of the Goods of the first Testator carried away, and Execution of Statutes and Recognizana ces, &c. 25 Ed.5.

The Title and Interest of an Executor is by the Testament, and not by the Probate; but without shewing it they may release the

Probate.

The Justices will not allow them to fue Actions.

The Executor shall have the Wardship of the Body and Lands of the Ward in Knights fervice, but not in Soccage and Leases for years, and Rent-charges for years, Statutes, Recognizances, Bonds, Lands in Execution, Corn upon the ground, Gold, Silver, Plate, Jewels, Money, Debts, Cattel, and all other Goods and Chattels of the Testator, if they

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he not devised, and may devise them: but if he do will omnia bona & catalla sua, the Goods of the Testator pass not, neither shall

they be forfeited by the Executor.

An Executor is chargeable for all Duties of the Testator that are certain, but not for Trespass, nor for Receipt for Rents, nor for occupation of Lands, as Bailiss or Guardian in Soccage, &c. for this is not any Duty certain so far as he shall have Assets. If the Executor do waste the Goods of the Testator, he shall pay them of his own.

An Executor shall not be charged but with such Goods as come to his hands; but if a stranger take them out of his possession,

they are Affets in his hands.

If an Executor take Goods of another mans amongst the Goods of the Testator, he shall be excused of the taking in Trespass.

Duties by matter of Record shall be fatisfied before Duties by Specialty, and Duties by Specialty before Charges, and Lega-

cies before other Duties.

An Executor may pay a Debt or Credit of some kind, depending the Writ, before notice of the Action, but not after notice or Issue joyned.

An Executor may pay Debts with his own money, and retain so much of the Testa-

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Administrators.

evise them tors Goods, but not Lands appointed to be catalla ful fold.

Any of these words, debere, solvere, recipere, borrowed, or any word that will prove able for all Dira man a Debtor or to have the money, if it rtain, but me be by Bill will charge the Executor or Adfor Rents, an ministrator, but not the Heir if he be not na-

CHAP. XLVIII. ADMINISTRATORS.

A N Administrator is he to whom the Or-I dinary of the place, where the Intestate. dwelt, committeth the Testators Goods, Goods of an Chattels, Credits, Rights.

For wherefoever a man dieth intestate, eiking in Trefat ther for that he was fo negligent he made no. Testament, or made such an Executor as refused to prove it, or otherwise is of no force; the Ordinary may commit the Administration of his Goods to the Widow, or next of a Debt or Of kin, or to both, which he pleafeth, making the Writ, in request, and revoke it again at his plea-

The Ordinary may affign also a Tutor to Debts with the Intestates Children, to his Sons untill 12

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Administrators.

But so that it may be not a prejudice to him that is the Guardian: and after those years he or she may respectively chuse their own Curators, and the Guardian may consirm them, if there be no good order taken by their Fathers Will.

As if such a Tutor die, the Infant cannot have an Action of Account against his Exe-

cutor.

The power and charge of an Administrator is equal in every point to the power and charge of an Executor. A man may have an Action of the Case against the Executor or Administrator upon the Assumption of the Testator, upon good consideration, or Debt for Labourers wages, by the Statute.

And if a man make an Infant his Executor, the Ordinary may commit the Execution of the Will of the Tutor of the Child to the Childs behoof, until he be of the age of 17 years and if he be granted for longer

time it is void.

An Administrator durante minoritate may do nothing to the prejudice of the Infant, he may not fell any of the Goods of the deceafed, unless it be upon necessity, as for the payment of Debts, or that they would perish; nor let a Lease for a longer time then whilest he is Executor.

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An Infant upon the true payment of a Debt due to the Testator may make an Acquittance, and it shall be good.

For a Child may better his Estate, but not

make it worfe.

CHAP. XL!X. HEIR.

IF a man die feized of any Lands, and do not dispose of them by his Will, they descend to his Heir, as aforesaid.

And he shall have not onely the Glass and Wainscot, but any other of such like things affixed to the Freehold or Ground, as Tables dormant, Furnaces, Vats in the Brewhouse or Dyehouse, and the Box or Chest wherein the Evidences are, the Hawks and the Hounds, the Doves in the Dovehouse, the Fish in the Pond, and the Deer in the Park, and such like.

He shall be charged by Specialty for the Debts of his Ancestor, so long as he hath Affets, if the Executor or Administrator have not sufficient.

No Law nor Statute doth charge the Heir for the wrong or trespass of his Father, but by express words.

WIDOW.

The Widow shall have all her Apparel, her Bed, her Copher, her Chains, Borders, and Jewels, by the honourable Custom of the Realm, except her Husband unkindly give any of them away. Or be it in Debt, that it cannot be paid without her Bed, &c. yet she shall have her necessary Apparel.

What things are arbitrable, and what not...

Things and Actions Personal incertain are arbitrable, as Trespass, taking away of a Ward, &c.

But things certain are not arbitrable, but when the Submission is by Specialty, if they be not joyned with others incertain, as Debt with Trespass.

Matters concerning the Commonwealth, fome are not arbitrable, as Criminal Offences, Felonies and fuch like, concerning the Crime.

In the Submission three things are to be regarded.

First, that it be made in Writing with the parties Covenants, or Bonds subsequent and sofficient to bind them, their Heirs, Execu-

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tors, and Affigns to perform the Award which shall be thereupon made, that both the Arbitrators may know their power, and the parties revoke not their power: for all-is void that is not contained in the Submission, or necessarily depending thereupon; and the Arbitrators labour is lost, if they want means to compell the same to be executed.

Secondly, that there be power given to them fufficient to do all things necessary for the ordering of the Controversies, as to appoint times and places for their Meetings, to examine and decide the matters committed, and to bring their parties with their. proofs, evidences, and witnesses thither together before them, and to punish the place defective, and to expound and correct fuch doubtful sentences and questions, as may arise upon their Award, afterwards inconvenient to either parties, contrary to equity and the Arbitrators good meaning: which inconveniencies were not before by them feen at the making of the Award, Temporis Filia Veritas.

Thirdly, convenient time and place are to be limited for the yielding up their Award to the parties, or to their Assigns.

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110 Six things in Arbitrament.

Six things to be regarded in an Arbitrament.

1. That it be made according to the very fubmission touching the things committed, and every other circumstance.

2. That it be a final end of all Controver-

fies committed.

3. That it appoint either party to give or do unto the other something beneficial, in appearance at least.

4. That the performance be honest and

possible.

5. That there be a mean how either part by the Law may attain unto that which is thereby awarded unto him.

6. That every party have a part of the

Award delivered unto him.

For if it fail in any of these points, then is the whole Arbitrament void, and of none effect.

Examples thereof.

1. An Award that the parties shall obey the Arbitrament of A.M. is void, for pow-

er may not be affigned.

An Award that any of the parties shall be bound or do any other ast by the advice of the Arbitrator, is not good except it be in the

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parties shall y the advice d except it bea the submission so; but that the parties shall be bound, or make assurance by the advice of Counsel, is good.

2. An Award, that the parties shall be non-fuited, is not good, because it is no final end, for the party may begin again: that the par-

ty do withdraw his fuit, is good.

If the Submission be of divers things, and the Award onely of some of them, yet is the Award good for that part, as if the Submission be of all Actions real and personal onely, or if it be onely deposses fiscales.

3. If to fubmit themselves to the Arbitrament of all Trespasses, and it is awarded that the one shall make amends to the other, and nothing is awarded for the others benefit; this award is void.

So it were if one of them should go quite against the other, if the Submission were not by Bond, for an Award must be final, obligatory, and satisfactory to both parties.

An Award, that either party shall release to the other all Actions, and that because the one hath trespassed more then the other, he shall pay to the first, is good.

In Debt or Trespass of Goods taken, that the Desendent shall retain 'part', and the Plaintiff to have the rest, is not good.

4. An Award that one of the parties shall do an act to any stranger, the act is void if the

parties be not bound.

Or if it be that he shall cause a stranger to enseoff, or be bound to the other party, because he hathno means to compel the stran-

ger.

5. An Award is void if it be neither executed, nor any means by Law for the execution thereof: as if it should be awarded, that one should pay the other 10 l. this is good, for he may recover the same by an Action. of Debt. But if it were awarded, the one should deliver to the other an Acre of Land, or do such like act Executory, it were void if it be not delivered streight way, or provision made by Bond or otherwise, to compell the payment thereofaccording to the Award, if the Submission be not by Specialty.

6. Indentures of Arbitrament must be made of fo many parts, that every person.

may have a part.

Arbitramentum aquum tribuit cuique suum.

An Award is commonly made by Laymen, and shall be taken according to their intent, and not in so precise a form as Grants or Pleadings, but as Verdicts; yet the substance

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Agreement is not any tome, and to bleaded in that as the tompell the may refuse an Arbitay, before the quum, the parties fa act is void ithe

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form as Grans ; yet the fubfrance of the matter ought to appear either by express words, or by words equivalent, or by those that do amount thereunto.

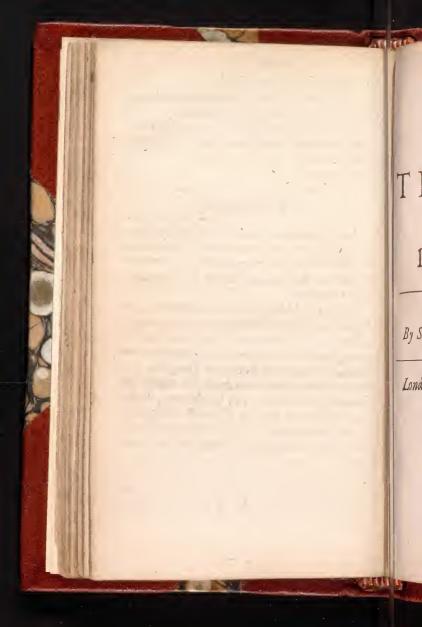
But it were good that Awards were drawn up by some that is skilful, for the avoiding of Controversies, which otherwise may arise about the same.

AGREEME NT.

An Agreement is made between the parties themselves: there must be a Satisfaction made to either party presently, or remedy for the recompence, or else it is but an endeavour to agree.

Tender of Money without payment, or Agreement to pay Money at a day to come, is not any fatisfaction before the day be come, and the Money be paid. It cannot be pleaded in Bar in an Action of Trespass; for that as the other party hath no means to compell the other to pay the Money, so he may resuse it at the day if he will. Otherwise in an Arbitrament: but Money paid at a day, before the Action is brought, is a good plea.

FINIS.



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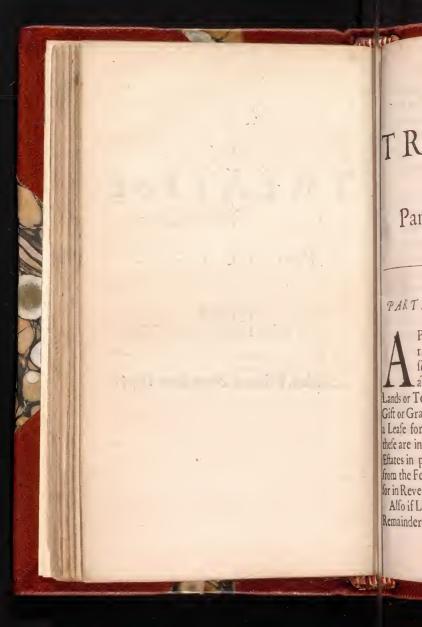
TREATISE

OF

Particular Estates.

Written
By Sir John Doddridge, Knight.

London, Printed Anno Dom. 1677.



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TREATISE

OF

Particular Estates.

TARTICULAR ESTATES.

Particular Estate is such as is derived from a General Estate, by separation of one from the other: as if a man seized in Fee Simple of Lands or Tenements, doth thereof cheat by Gift or Grant an Estate Tail, or by Demise, a Lease for Life, or any Estate for Years, these are in the Donee or Lessee. Particular Estates in possession derived and separated from the Fee Simple in the De-donor or Lesson in Reversion.

Also if Lands be demised to A for life, the Remainder to B and the Heirs of his body,

the Remainder to C and his Heirs, the Estate for Life limited to A, the Estate Tail limited to B, are Particular Estates derived ut supra, and separated in Interest from the Fee Simple: the Remainder given to C, albeit the same Remainder doth depend upon those Particular Estates.

And of Particular Estates some are created by agreement between the Parties, as the Particular Estates before specified; and fome by act of Law, as the Estate in Tail apres possibility de issue extinct, Estates by the Courtesie of England, Dower and Wardship: for albeit an Estate in Dower be not complete untill it be assigned, which oftentimes is done by affent and agreement between Parties; yet because the Party that fo assigneth the same is compellable so to do by course of Law, that Estate also is said to be created by Law. Also an Estate at will is a kind of a Particular Estate, but yet not fuch as maketh any division of the Estate of the Lessor, is seized; for notwithstanding fuch an Estate the Lessor is seized of the Land in this Demesn as for Fee in Possession, and not in Reversion.

Also an Estate at will is not such Particular Estate whereupon a Remainder may depend. But of all the Estates before mentioned,

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s fome are conn the Partie, ore specified; al he Estate in Il erinat, Estates !! Dower and Ward in Dower be no ned, which old nd agreement h fe the Party the mpellable fo to to tate also is said an Estate at vi fate, but vet mi of the Estate of notwithstandie is feized of the Fee in Possession

or fuch Particuinder may de before mentionce

Heirs, the Eles oned, many fruitful Rules and Observations are both generally and particularly fo lively fet forth by the faid Mr. Littleton, in the 1,2,3,4,5,6,7 and 8 Chapters of his first Book, which is extant as well in English as in French, whereunto I refer you.

POSSESSION.

T is further to be observed, that all Estates I that have their being are in Possession, Reversion, Remainder, or in Right; but of all these Possession is the principal. are two degrees of the first and chiefest Possession, In Fait Poss', in Law or Deed, is such as is before spoken of; and that is most proper to an Estate which is present and immediate: but yet fuch Possession of the immediate Estate, if it be not greater then a Term doth operate and enure to make the like Possession of the Freehold or Reversion. When a man is faid to have a Term, it is to be intended for years: when it is faid, a man to have the Fee of Lands, it is also to be intended a Fee Simple. Possession is that Posfession which the Law it self casteth upon a man

man before any Entry or Pernancy of the profits: as if there be Father and Son, and the Father dieth seized of Lands in Fee, and the fame to descend to the Son as his next Heir; in this case, before any Entry the fame hath a Possession in Law. So it is also of a Reversion exportant, or a Remainder dependent upon particular estate or life: in which case if Tenant for Life die, he in Reversion or Remainder, before his Entry, hath onely Possession in Law. All manner of Posfessions that are not Possessions in fait, are onely Possessions in Law: and it is to be obferved then, if a man have a greater Estate in Lands then for years, the proper phrase of Speech is, that he is thereof leized: but if it be for years onely, then he is thereof palel-But yet nevertheless the Substantive Possession is proper as well to the one as to the other

REVERSION.

Reversion is properly an Estate which the Law reserveth to the Donor, Grantor, or Lessor, or such like, which he doth dispole parcel o pole less Est was feized at ifaman sciz fame to and or if he do years: in th Reversion Leffor, and not with his articular Ef ate in Fee : 3 Expedance So if he tha nd, and doth ne to S in] ichisa great g dispose : in Reversion in 1 re formerly reason there fuldisposition not be witho wrong pluck from him t in Reversion

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dispose parcel of his Estate, when he doth dispose less Estate in Law then that whereof he was feized at the time of fuch disposition: as if a man feized of Lands in Fee doth give the fame to another, and the Heirs of his bolaw. So it dy; or if he doth difmiss the same for life or years: in these cases the same reserveth reflate or little Reversion thereof in Fee to the Donor ise die, heils or Lessor, and his Heirs, because he departore his Entry ed not with his whole Estate, but onely with All mannetell a particular Estate, which is less then his shions in find Estate in Fee: and fuch Reversion is said toanditistolt be Expectance upon the particular Estate. reagreater Alfo if he that is but Tenant for life for re proper part Land, and doth by Deed or Parol give the feized: but same to S in Tail, or for term of his life, e is thereof which is a greater Estate then he may lawis the Substant fully dispose: in this case the Law reserveth to the one a Reversion in Fee in such Donor, though he were formerly but Tenant for life. And the reason thereof is, for that by such unlawful disposition, which by Deed or Word cannot be without Livery and Seizin, he doth by wrong pluck out the rightful Estate in Fee, from him that was thereof formerly feized in Reversion or Remainder, and thereof an Estate who by a priority of Time, gained in an instant, Donor, Grat he was seized of a Fee Simple at the time of which he do the execution thereof. But if a man feized of

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of Lands in Fee Simple, giveth the same to A and his Heirs, untill B do die without Heir of his body: in this cafe the Law referveth no Reversion in the Donor, because the Remainder Estate disposed to A is a Fee Simple deter- disposed minable, is in nature fo great as the Estate aton of fuc which the Donor had at the time of fuch nicoth de Gift, and consequently he departed thereby et, demiset with all his Estate, and thereby an apparent mainder to difference is between a Gift made to A and Remainder the Heirs of his own body, and a Gift made Shath a par to him and his Heirs untill B die without then also di Heir of his body; for in the one case the Do- reby B hath nor hath but an Estate Tail, and in the other poer in Tail, a Fee Simple determinable hath a possibility inding in or of Reverter; for if B die without Heir of impossession his body, then whether A be living or dead things are re it shall revert to the Donor by such possibile of, that is co lity of Reversion; for he that hath but such it. a possibility hath no Estate, nor hath he pow- condly, tha er to give his possibility : but in the other pr, or Lesse case the Donor hath his Estate in Fee, and the partici therefore he hath power to dispose thereof at d. his pleasure.

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REMAINDER.

onor, becal A Remainder is a remnant of an Estate Fee Simple I disposed of to another at the time of great asthe Creation of fuch particular Estates whereat the timed upon it doth depend: as if S seized of Lands e departed in Fee, demiseth the same to B for life, the hereby as a Remainder to C and the Heirs of his body, Gift made the Remainder to D and his Heirs: in this dy, and a Garafe S hath a particular Estate of the Lessor, ntill B die it is then also disposed to Cand Dut Supra, the one cased whereby B hath an Estate for life, Ca Reail, and inthe nainder in Tail, and D a Remainder in Fee, ble hath a pullepending in order upon the particular Eie without hate in possession. And in every Remainder Abeliving ve things are requisite.

onor by fund. First, that it depend upon some particular

te, nor hath Secondly, that it pass out of the Grantor, butin the Donor, or Leffor, at the time of the Creati-Effatein la n of the particular Estate whereon it must to disposethen epend.

Thirdly, that it vest during the particular state, or at the instant time of the determi-

ation thereof.

Fourthly, that when a particular Estate is reated, there be a remnant of an Estate left the Donor, to be given by way of Remainer.

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Fifthly, that the person or body to whom dieth in the the Remainder is limited, be either capable because h at the time of limitation thereof, or else is during the potentia propingua, to be thereof capable du costhe det ring the particular Estate. If Lands be give die, no per to J.S. and his Heirs, the Remainder for de eof the Ho fault of fuch Heir to J.D. and his Heirs, that jut if Lands Remainder is void, because it doth not de life, the Ren pend upon any particular Estate. But i ingular nui Lands be given to J.D. for the life of J.D. y, and after the Remainder to J.B. his Remainder h, that is a good, for it is not limited to depend upon hath there Fee Simple, but upon a particular Estate ighitwere which is onely called an Estate for life should vest J.B. descendable. If Lands be given to B for wife during 11 years, if Cdo fo long live, the Remainder, yet it ma after the death of C to D in Fee, this Re t of his dea mainder is void, for in this case it canno is determine pass out of the Lessor at the time of the Creation of the particular Estate for years onceming the but if a Lease be made to B for life, the Re of Landsin mainder to the Heirs of C, who is then Int, or Com ving; this Remainder is good, upon a con ; which be tingency that if C die in the life of B, for the S. for term Remainder may well pass out of the Lesse; infee; the presently without Abeyance, without any is sthing gra conveniency, because onely the Inheritand Grant to separated from the Freehold is an Abeyand of ore have If Lands be given for life, with a Remainde

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to the right Heirs of J.S. and the Tenant for on or body to life dieth in the life of J.S. this Remainder is. ed, be either void, because he died not vest or settled, ein thereof, and ther during the particular Estate, or at the be thereof capit time of the determination thereof; for untill ate. If Landshi 7. S. die, no person is thereof capable by the. the Remainder hame of the Heir.

7.D. and his Ha But if Lands be given to 7.S. for term of pecause it down his life, the Remainder to his right Heir, (in cular Estate. the singular number) and to the Heirs of his D. for the lite body, and after J.S. hath Iffue a Son and F.B. his Remi dieth, that is a good Remainder, and the. nited to depend Son hath thereby an Estate Tail; for alin a particular though it were unpossible that such Remained an Estate in der should vest during the particular Estate, Lands begind because during his life none could be his ong live, the Ra Heir, yet it may be and did vest at the into D in Fee, thant of his death, which was at the time or in this calest of his determination of the particular E-

Concerning the fourth thing: If a man feieto B for life, zed of Lands in Fee granteth out of the same a Rent, or Common to Pasture, or such like thing, which before the Grant had no being, in the life of I to J.S. for term of life, the Remainder to pass out of this thing grant of the Remainder is void, because eyance, without of this thing granted there was no Remnant onely the lime heretofore hereto heretofore have been of opinion, that albeit

Remainder.

the same cannot take effect, as another Grant of a new Rent or Common; Ut res magis

valeat quam operat.

This is a Rule in Law, That a thing enjoyned in a superiour degree, shall not pass under the name of a thing in any inferiour degree. And therefore if Lands be given unto two persons, and unto the Heirs of one of them; unto the Husband and Wife, and Heir of the Husband; and he that hath the time. Estate of Inheritance granteth the Version of the same Land to another in Fee, such Grant lase of L is void, because the Grantor was thereoffei te Remai zed in a superiour degree, viz. in Possessi- 1 ch Rema on, and not in Reversion, as appeareth trealled 22 Ed.a. fol. 2. & 13 Ed. 3. Erook title of 1 1g the pe Grants 137.

And concerning the first and last thing to Son o if a Lease be made of Land for term of life. the Remainder to the Maior and Commonal. In aftern ty of D, whereas there is no fuch Corpora-I tate. tion there in being, this Remainder is meerly void, albeit the Kings Majesty by his Let. ters Patents do create such Corporations du ring the particular Estate; for at the time of such Grant the Remainder was void, because then there was no such Body Corporate thereof capable, or potentia propingua to be created and made capable thereof during

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the particular Estate, but the possibility thereof was then forein and probably intended. The like Law is, if a Remainder be limited to J. the Son of T.S. who had then no Son, and afterwards during the particular Estate a Son is born who is named J, yet this Remainder is void, for at the time of such a Grant as was not to be probably in tender, that T.S. should have any Son of that name.

Also before the dissolution of Abbies, if a Lease of Land were made to F.S. for life, the Remainder to one that then was a Monly, such Remainder was void for the cause before alledged, albeit we were deraigned during the particular Estate. But if such Remainder had been limited to the first begotten Son of F.S. it had been good, and should accordingly have vested in such a Son afterwards born during the particular Estate: A literal such a such as a suc

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Right in Land is either clothed or naked: a Right clothed is when it is G.4 wrapwrapped in a Possession, Reversion, or Remainder. A naked Right, which is most commonly called a Right, is when the same is separated from the Possession or Remainder by Disseizin, Discontinuance, or the devesting and separating of the Possession; as for example, if a Leafe of Land be made for life to 7.S. the Remainder to J.D. in Fee; in this case J. S. hath a Right clothed But if a stranger that with a Remainder. hath no Right or Title, doth in the same case enter into the Land by wrong, and put J.S. out of possession, such Entry by wrong is called a Diffeizin; and therefore the Poffession is moved from the Right by reason thereof, the Disseizor is seized of the Land, and J.D. hath also the like naked clothing to the Remainder by fuch Diffeizin, is likewise devested and plucked out of him, cannot be revested in him during the Right of such particular Estate, unless the possession of such particular Tenement be therewith revested, which must be by his Entry or Recovery by Action; and by fuch Entry of the particular Tenement, or by his Recovery with Execution, the Remainder shall be invested as well as the particular Estate. And so there is a Right in Goods and Chattels, as well as Lands, Tenements, and Hereditaments, which 15

salfo clo he rightf f anothe mong, h he fame, or the cat deafe his hereof po efore alle ento be fo hay grant is also clothed with a Possession, so long as the rightful Proprietor hath the same; but if another doth take them from him by wrong, he now hath onely a naked Right to the same, which cannot be by him granted for the cause before alledged, but yet he may release his Right there unto him that is thereof possession. If a Release of Right happen to be forfeited to the King, his Highness may grant the same by his Prerogative.

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By T. H. Gent.

Cujus Posse est Velle.

London, Printed Anno Dom. 1677.

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THE PREMISSES.

OU may find in the Premisses, First, the direct Nomination as wells of the Feosffor as of the Feosffee, together with their places of Residence, Habitation, or Dwelling, and their Qualities, Estates, Additions, or Conditions. Secondly, the certain Expresent and setting down of the Lands conveyed.

In Com' Norff. Comitatus dicitur à comitando, of accompanying together; for generally at Affizes and Sessions, those of that County where such Assizes and Sessions are kept,

kept, use to be impanelled upon Juries, &c. for trial of Issue taken upon the fact betwixt party and party, and not those in another County: and it is a common prefumption, that all persons within their Counties take notice of fuch things as are there publickly done; hereupon it happeneth, that where Lands, &c. lie in divers Counties, if they be conveyed by Feoffment, &c. Livery of Scizin must be made in every County, where any parcel of the Lands, &c. do lie. Otherwise it is of two parcels of Land in one and the same County. The name County is in understanding all one with Shire, which is so called from dividing, and either of them contain a certain portion of the Realm, which is parted into Counties or Shires for the better government thereof, and the more easie administration of Justice. Hence it cometh to pass, that there is no parcel of this Kingdom which lieth not within the circuit or precinct of some County or Shire. There are reckoned in England 41 Counties or Shires, and in Wales 12. The County of Norfolk lying Northward is so called in opposition to Suffolk, which lieth towards the South, each one in respect of other gaineth his Name.

The Addition given to the Feoffor, you may perceive to be Yeoman, the Etymology

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whereof Mr. Verstegan fetcheth from Gemen, a word anciently used amongst the Teutonicks, which (as my Author faith) fignifieth Vulgar or Common, and so the Letter G by corruption being turned into the Letter Y, we fay and read Temen or Teomen. Others (how probably I dare not affirm) derive it by contraction from these two words, viz. Young men. Famous Mr. Cambden in his Britannia, after he hath reckoned up fundry Degrees both of Nobility and Gentry, ranketh Ycomen in order next Gentlemen, naming them Ingenuous, in which fense I apprehend Teomen to be montioned in a certain Statute made 16 R.2. and in divers other Statutes. And although the Derivations of words be conveniently requir'd in the Law, and in every Liberal Science, (for Ignoratis terminis ignoratur & ars) yet to use the expression of a Learned Divine, though spoken in another case, Melius est dubitare de occultis quam litigare de incertis; so I must leave you to your own conceit concerning the original of the word Yeoman, having onely fet you down one or two Opinions about it : however I must not forget what Sir Thomas Smith faith in his Repub. Anglorum, who very truly and properly calleth him a Yeoman, whom the Laws of England call Legalem hominem, that

that is to fay, a Freeman born: and Mre Lambert in his Eirenarcha will excellently inform you who are, and who are not, probi-

& legales homines.

There is no special, but onely a general consideration expressed in the Feosfment, neither of which (as I conceive) is in fuch case absolutely material, (though I may say formal) in regard of the notoriety of Deeds of Feoffment, &c. for Livery and Seizin (as shall be said afterwards) is effentially required to make them perfect, which cannot be without the knowledge of others, besides the parties themselves; and a Feoffment doth thereby always import a free and willing consent, otherwise peradventure it might have happened in a bargain and fale, before 27 H.8.cap. 16. for the better illustration whereof take this Example: You and another man agree together, that you shall give him a certain Summe of money for a parcel of Land, and that he shall make you an Affurance of it: you pay him the money, but he maketh you no Assurance; in this case although the state of the Land be still in him, nevertheless the equity in conscientia boni viri is with you, which equity is called the use, for which untill the 27 H.S. cap. 10. there was no remedy, (as faith Sir Francis Bacon) and

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and that very truly, except in the Court of Chancery, but the fame Statute conjoyneth and annexeth the Land and the Use together, to you by this means for the consideration have the Land it felf, without any further Conveyance, which is called a Bargain and Sale. But those grave Senators and worthy Statesimen, who made the said Act of the 27 H.S. cap. 10. for the transferring of Uses into Possession, wisely foreseeing that it would be very inconvenient and prejudicious, nay mischievous, that mens Possessions should upon such a sudden by the payment of a little money be transported from them, and perhaps in a Tavern or Alehouse, and upon strainable advantages) did discreetly provide in the same Parliament the said Act of 27 H.8.cap. 16. that Lands, &c. upon the payment of Money as aforefaid, should not pass without a Deed indented and inrolled, as by the purport of the same Act may appear. Now seeing that before the said Act of 27 H.8.cap. 16. Lands might pass by bargain and fale upon confideration, without Deed indented and inrolled, and might not pass without consideration in such manner, therefore I have heard Lawyers fay, that confideration is still required in a bargain and sale, though it be by Deed indented and inrolled, acaccording to the same Statute. Sure I am, that regularly in a Deed of Feoffment it is not so as formerly is declared, and for the reason before expressed.

DEDISSE.

The word Dedi (by force of an Act of Parliament made 4 Ed. 1.c.4. commonly called the Statute De Bigamis) implieth a Warranty to the Feoffee and his Heirs during the life of the Feoffor, whereupon Fitzherbert in his Natura Brevium, fol. 134.h. puts a Case to this effect, viz. If a man give Lands to one in Fee by Deed, by the words dedi, conceff., &c. hereby he shall be bound to warrant the Lands of the Feoffee by vertue of those words, and if the Feossee be impleaded, he shall have his Writ of Warrant. Chart. against the Feoffor, by reason of the words... dedi, concessi, &c. but not against his Heir, for the Heir shall not be bound to Warranty, except the Father bind himfelf and his Heirs to Warranty, &c. by express words in the Deed. I know some alledge, that because as well the Statute as Fitzherbert, mentions not onely dedi but concessi also; therefore the one without the other implieth no Warranty: to whom it may be answered, That

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That the Statute it self doth plainly prove against them, for the conclusion thereof hath, these words, Ipse tamen feoffator in vita sua ratione proprii doni sui tenetur warrantizare; and also the Testimony of Sir Edward Coke may be produced herein, who affirmeth that the Statute of Bigamis, anno 14 Eliz. in the Court of Common Pleas was expounded, as above is mentioned, namely that dedi did imply the Warranty: and Mr. Perkins, cap. 2. saith, that dedi in a Deed of Feossment comprehendeth in it a Warranty against the Feossfor, and so doth not the word concession.

CONCESSISSE.

I conceive the word concessi in Feosfments and Grants, (the implied Warranty excepted which dedi creates) to be of the same effect with dedi, and also with consirmavi, especially in some cases: to which purpose hear what Littleton speaketh in his chapter of Discontinuance, Also (saith he) in some cases this Verb dedi, or this Verb concessi, hath the same effect in substance, and shall enure to the same intent as the Verb confirmavi: as if I be disseized of a Carve of Land, and I make such a Deed, Sciant prasentes, &c. quod dedi to the Disseizor, &c. or quod concessi to the

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faid Disseizor the faid Carve, &c. and I deliver onely the Deed to him, without any Livery of Seizin of the Land, this is a good Confirmation, and as strong in Law as if there had been in the Deed this Verb confirmavi, &c.

LIBERASSE.

The word liberavi I take to be of the same nature with tradidi, which I have often seen in Feossements, whereof it is remarkable that Hephron the Hittite, when he assured the Field of Machphelah to Abraham, Gen. 32. 11. used the word trado, agrum trado tibi, that is, to Abraham, as S. Hieroms Translation reads it.

FEOFFASSE.

This word cometh from feudum or feodum, which fignifieth Fee, and is always, or for the most part used in Feosffments, as participating of the same nature.

CONFIRMASSE.

Concerning the word confirmo fomewhat may be gathered from what hath been fpoken

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ken about the Verb concessisse, yet I cannot forget how S. Hierom renders the expresement of the said assurance of the said Field of Machphelah to Abraham for a Possession, in these words, consirmatus est ager, &c. Gen. 23.17. And now I come to the second thing considerable in the premisses, namely the Feossee, whose Addition is Generoso.

GENEROSO.

which some derive from the two French words Gentil Home, denoting such a one as is made known by his Birth, Stock, and Race. Sir Thomas Smith calleth all those Gentlemen that are above the degree of Ycomen: whence it may be concluded, that every Nobleman may be rightly termed a Gentleman, sed non vice versa. Mr. Cowel conceiveth the reason of the Appellation to grow, because they observe Gentilitatem suam, the Propagation of their Bloud, by giving or bearing of Arms, whereby they are differenced from others, and shew from what Family they are descended.

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Some will have an Heir fo called quia haret in hareditate, or quia haret in se hareditas: but to let fuch conceits of witty invention pass, it is certain that an Heir is so cal-

led from the Latine word Hares.

Littleton in his chap. of Fee Simple faith. that these words [his Heirs] onely make the Estate of Inheritance in all Feoffments and Grants, &c. furethen it is necessary for him that purchaseth Lands, &c. in Fee Simple, to have the Feoffment runto himself & heredibus suis; for if it run onely to himself & affignatis suis, although Livery and Seizin be made accordingly, and agreeable to the Deed, yet thereby onely an Estate for Life shall pass, because there wanteth words of Inheritance: and yet without Livery and Seizin in the case aforesaid onely an Estate at Will shall pass. And the reason why the Law is fo strict in this thing, (as in many others) for to prescribe and appoint such certain words to create and make an Estate of Inheritance is, (as Mr. Plowden faith in his Commentaries) for the eschewing and avoiding of incertainty, the very fountain and fpring from whence floweth all manner of

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confusion and disorder, which the Law utterly condemneth and abhorreth. What herein hath been faid is to be apprehended and understood of persons in and according to their natural capacities. Yet perhaps an Estate of Inheritance may sometimes passina Deed of Feoffment by words, which may have reference and will relate to a certainty, for Certum est quod certum reddi potest: as for example, You enfeoff me and my Heirs of a certain piece of Land, to hold to me and my Heirs; &c. and I re-enfeoff you in as large, ample, and beneficial manner as you enfeoffed me : in this case (they say) you have a Fee Simple for the reason above expressed. So I come next to see what observations a Deed of Feoffment further affordeth.

Totam ill. pec. terra cont.

Very necessary and convenient it is in Deeds of Feoffment, &c. to have the Lands, &c. thereby intended to be conveyed, certainly and expresly to be set down, as well how much by estimation in quantity they do contain, as the quality of the same, whether Medow, Pasture, &c. being the species of Land, (which is the genus) and the place where, and manner how, they exist and lie, the

Totamill. vec. terre cont.

the better to shun and avoid doubt and am- ficult to biguity, which oftentimes ftir up occasions of unkind Suits and Contentions betwixt party and party. I know that Grammarians reading the word peciam will be ready to fmile, and alledge that it cannot defend it felf in bello grammaticali, which I easily confess: but what then? what can they infer from hence? will they therefore utterly condemn the use thereof? methinks they should not, but might give Lawyers leave to fpeak in their own Dialect. But what if fome take exceptions at this word, having occasion to meet with it here, what would they do should they read the Volums of the Law, where instead of bellum they shall find guerra, instead of sylva they shall find boscus, and fubboscus, with a thousand the like? Surely (as faith Erasmus) they might commend or else condemn what they could not understand, or haply understanding, might admire from whence fuch uncouth words should proceed: for their better information (if I thought they would thank me for my labour) I could tell them that because the Saxons, Danes, and Normans, have all had fome hand, or at least a finger in our Law, therefore through the commixion of their feveral Languages, it comes to pass that such diffi-

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TEMPE

difficult terms and harsh Latine words (if I may fo call them) are frequently obvious in the Books and Writings of the Law. And indeed I fee no reason why any man should object or cavil against the usage of such words, though they be not classical, feeing that as well in the Art of Logick as in Philofophy there are found many words, which they call vocabula artis, Vocables of Art, which canno better stand according to the strict Rules of Grammar, then the ancient words of Law, which cannot be changed without much inconvenience.

ACRA.

Acra, in English an Acre, seemeth to come from the Latin word ager. An Acre is taken to be a quantity of Land containing 40 Perches in length and 4 in bredth. Crompton in his Jurisliction of Courts faith, that a Perch is in some places more, and in fome places lefs, according to the different usages in different Countries; and so then it must needs be of an Acre. But ordinarily or for the most part a Perch is accounted and esteemed to contain 16 foot and an half in length. I take it to be the same with that measure which we call a Rod or Pel. A

Parch

Perch in Law Latin is called pertica or perticata. See the Ordinance made for measuring of Land, anno 34 Ed. 3. in Pultons Abr. tit. Weights and Measures.

QUAREN.

Quarentena in English a Furlong or Furrow long. Firlingus or Firlingum is the same. It hath been sometimes accepted and taken for the eighth part of a mile, anno 35 El.c. and I have read that Firlingus or Ferlingusterra continet 32 acras. The Latins call it Stadium.

ABBUTT.

Abbutto is a Verb used by Lawyers to shew how the heads of Lands do lie, and upon what other Lands or places, denoting for the more certainty what Lands, &c. are adjacent about the Lands, &c. abbuttalled. And now that I may speak once for all, in regard that Lawyers do use to abbreviate their words in writing, the reason is not (as some ignorantly have supposed) because they cannot express their terminations and endings, as they ought to be, but because of the multiplicity of business which they are to gothrough,

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nights Ce eperform ck, and Gentilit through, oftentimes requiring very sudden dispatch. Yet I could wish that the custom of short writing alicui scriptori non esset dissendium; but I fear me too many hereby take occasion to be wilfully ignorant, which otherwise peradventure they would not do.

MILITIS.

Miles amongst the Latins signifieth a Souldier, and in this place and the like Miles is to be Englished a Knight, which (as Mr. Cambden noteth) is derived from the Saxon Gnite or Cnight. The Heralds will inform you of divers and fundry Orders of Knights, if you please to consult with them or their writings thereabouts. AKnight at this cay is, and anciently hath been, reputed and taken for one, who for his valour and prowels, or other Service for the good of the Commonwealth performed, hath by the Kings Majesty, or his sufficient Deputy on that behalf, been as it were lifted up on high, advanced above or separated from the common fort of Gentlemen. The Romans called Knights Celeres, and sometimes Equites, from the performance of their Service upon Horse back, and amongst them there was an order of Gentility styled Ordo Equestris, but distin-H 2 guished

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guished from those they called Celeres, as several Roman Histories do plainly testifie. The Spaniards call them Cavallero's, the Frenchmen Chevaliers, and the Germans Rieters; all which Appellations evidently enough appear to proceed from the Horse, which may be some testimony of the manner of the execution of their warlike Exercises. And surely it is a very commendable policy in States to dignishe well deserving persons with honourable Titles, that others may thereby be stirred up to enterprize and undertake Heroick Acts, and encouraged to the imitation of worthy and renowned Vertues.

ARMIG.

Armiger in English signisheth Esquire, from the French Esquier; and perhaps an Esquire may be called Armiger quasi arma gerens, from his bearing of Arms. Ancient Writers and Chronologers make mention of some who are called Armigeri, whose Office was to carry the shield of some Nobleman Mr. Cambden calls them Scutiferi, which seems to import as much and homines ad armadisti. They are esteemed and accounted of amongst us next in Order to Knights.

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CLERICI.

Clericus in English we read Clerk. It hath with us two fundry kinds of acceptations: in the first sense it noteth such a one who by his practice and course of life doth exercise his Pen in any the Kings Majesties Courts, or elfewhere, making it his calling or profession; hereupon you shall find in the current of Law mention made of divers Clerks, as for example, the Clerk of the Crown, the Clerk of Affize, the Clerk of the Warrants, the Clerk of the Market, the Clerk of the Peace, with many others. In the fecond fense it denoteth fuch a one as belongeth to and is imployed about the Ministry of the Church, that being his Function; in which fignification it is to be taken in this place, and in the like: for I for my part did never find Clerk in the first sense appropriated to any as an addition simply. We have the use of the word Clericus from Clerus or Clericatus, fignifying the Clergy, that is to fay, the whole number of those which properly so called, or rather strictly, are de Clero Domini, i. e. bareditate sive sorte Domini; for Clerus cometh from unifer, a Greek word fignifying the same with fors in Latin, namely a Lot or Por-H 3 tion.

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The HABENDUM.

The Office of the Habendum is to name again the Feoffee, and to limit the certainty of the Estate, and it may and doth some time qualifie the general implication of the Estate, which by construction and intendment of Law paffeth in the premisses: for an example whereoffee Bucklers cafe in the fecond Book of Sir Edward Cokes Reports, and Throckmortons case in Plowdens Commentaries. It is to be noted, that the premisses may be enlarged by the Habendum, but not abridged, as it plainly appeareth as well in the faid cale of Throckmorton, as in Worteslies case reported also by Mr. Plowden; and I have read (as my Collections tell me) that it is required of the Habendum to include the premisses. Moreover, the Habendum (as W.N. Esq; hath it in the Treatise of the Grounds and Maxims of the Law) must not be repug. nant to the premisses, for if it be it is void, and the Deed will take effect by the premisses, which is very worthy of observation.

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The TENENDUM.

The Tenendum before the Statute of Quia emptores terrarum, made 18 Ed. 1. was usually de Feoffatoribus & Haredibus suis, & non de capitalibus dominis feodorum, &c. viz. of the Feoffors and their Heirs, and not of the chief Lords of the Fee, &c. whereby there hapned divers inconveniencies unto Lords, as the losing of their Escheats or Forseitures: and other Rights belonging to them by reason. of their Seignories, which as the same Statute expresseth it, durum & difficile videbatur, &c. Whereupon it was granted, provided, and enacted, Quod de catero liceat unienique libero homini, terras suas seu tenementa sua, seupartem inde ad voluntatem suam vendere, ita tamen quod feoffatus teneat terram illam seu tenementum illud de capitali domino feodi illius, per eadem servitia & consuetudines per que feoffator suus illa prins de eo tenuit. Que estate fuit fait (as saith one) pur l'advantage del Seignior. Which Statute was made for the advantage of Lords, and indeed I eafily believe it. Now it is evident from that which hath been declared out of the faid Statute, that at this day the tenendum, where the Fee Simple passeth, must be of the chief Lords H.4.

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152 The Clause of Marranty.

Lords of the Fee, &c. for no man since the said Statute could ever convey Lands in Fee to hold of himself, out of which Rule the King onely (I think) may be excepted: and it is not in silence to be passed over, that where Lands, &c. are conveyed in Fee, though there be no tenendum at all mentioned, yet the Feossee shall hold the same in such manner as the Feosser held before, quia fortis est Legis operatio, the Statute so determines.

The Clause of Warranty, Et ego & hæredes mei, &c. warrantizabimus, &c. desendemus, &c.

Warrantizo is a Verb used in the Law, and onely appropriated to make a Warranty. Littleton in his chapter of Warranty saith, que cest parel, &c. that this word warrantizo maketh the Warranty, and is the cause of Warranty, and no other word in our Law; and the argument to prove his assertion is produced from the sorm and words used in a Fine, as if he should say, Because the word defendo is not contained in Fines to create a Warranty, but the word warrantizo onely; ergo, &c. which argument deduced and drawn a majore ad minus is very forcible, for the greater being enabled, needs must the

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lesser be also enabled; Omne majus in se continet quod minus est, & quod in majori non valet, nec valet in minori. But certainly Littleton is to be understood onely of an express. Warranty indeed, and of a Warranty annexed to Lands, for there may be and are other words which will extend and inure fufficient-Iv to warrant Chattels, &c. and which will imply a Warranty in Law, as dedi, &c. and. excambium (as I have heard fay) implieth a. Warranty in Law, which from Glanvils Vel in excambium, or escambium datione, l.3.c. I. may receive some confirmation. And Littleton in his chap, of Parceners teacheth, that Partition implieth a Warranty in Law, &c... And lest some may hear fay that defendemus. stands for a cypher, I will tell them what Bratt. declareth of it speaking about a Warranty in Deed from the Feoffor and his heirs, whose words are these, Per hoc autem quod dicit (scil Feoffator) defendemus, obligat se & heredes suos ad defendendum si quis velit ser-_vitutem ponere rei data contra formam donationis, &c. Lawyers in their books make mention of three kinds of Warranties, viz. Warranty Lineal, Warranty Collateral, and Warranty which commences by Diffeizin. first is when one by Deed bindeth both himfelf and his Heirs to Warranty, and after Death H 5

154 The Clause of Marranty.

Death this Warranty discendeth to and upon his Heir. The fecond is in a transverse or overthwart line, so that the party upon whom the Warranty difcendeth, cannot convey the title which he bath in the Land, from him that was the maker of the Warranty. The third and last is, where a man unlawfully entereth upon the Freehold of another, thereof diffeizing him, and conveyeth it with a Warranty; but this last cannot bar at all. Of these you may read plentiful and excellent matters and examples in Littletons Chapter of Warranty, and Sir Ed. Coke learnedly commenting upon him, to whom for further illustration hereof I refer you, as also to Mr. Cowels Interpretation of words in the title Waranty, who there remembreth divers things very worthy observation concerning it. Before I come to the fifth part of the Deed of Feoffment, give me leave to observe that a Warranty always descendeth to the Heir at the Common Law, and followeth the Estate (as the shadow of the substance) and whenfoever the Estate may, the Warranty may also be defeated, and every Warranty (as faith Sir Ed. Coke) which descends, doth descend to him that is Heir to him. which made the Warranty by the Common Lavy.

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The Clause of In cujus, &c. 155

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And moreover it is to be noted, as may be gathered from what hath been formerly faid, that an Heir shall not be bound to an express Warranty, but when the Ancestor was bound by the same Warranty, for if the Ancestor were never bound, the Heir shall never be charged. And I remember I have read a Case in Br. Abr. 35 H.8 pl. 266. to this purpose; Si home dit en son garranty, Et ego. tenementa pradicta cum pertinentiis prafato. A.B. le I onee warrantizabo, & ne dit, ego & karedes mei il mesme garrantera, mes son heir nest tenus de garranter, pur ceo que Heirs nesont expresse en le garrante. B. garr.50. So. will I forbear to speak any further herein, being a very intricate and abstruse kind of Learning, requiring the Pen of a cunning and experienced Lawyer, and now I address my felf to the fifth orderly or formal part of the Deed of Feoffment, the clause of In cua jus, Oc.

In cujus rei testimonium, &c.

This Clause is added as a Preparatory direction to the sealing of the Deed: for sealing is effentially required to the persection thereof, because it doth plainly shew the Ecosfors consent to, and approbation of what

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therein is contained, hereupon it will not be much devious or out of the way to make forme mention of those Fashions, which in the manner of scaling and subscribing of Deeds, have been anciently used by our Ancestors. Some report that the Saxons in their time (before the Conquest) used to subscribe their Names to their Deeds, adding the Sign of the Cross, and setting down in the end the Names of certain Witnesses, without any kind of Sealing at all. But when the Normans came in, as men loving their own Country guises, they per petit & petit changed that cuftom, as also many others which they found here: and Ingulphus, who was made Abbot of Croyland in anno Dom. 1075. feemeth to confirm this opinion in these words, Normanni cheirographorum confectionem cum crucibus aureis, & aliis signaculis sacris in Anglia sixmari solitam, in cera impressa mutant. Yet I have read of a fealed Charter in England before the Conquest, namely that of S Ed. made to the Abby of Westminster: yet surely this doth not altogether repugn that which hath been formerly faid, for I have feen in Mr. Fabians Chronicle, and eliewhere, that S. Ed. was educated in Normandy, and 'tis not unlikely but he might in some things incline to their fashions. The Frenchmen have a Proverb,

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The Clause of In cujus, &c. 1

verb, Rome n'a este bastie tout en un jour, and we in England use the same, namely, Rome was not built in one day; fo it cannot be conceived that the Normans in an instant did alter the Saxon custom wholly in this particular, but that it did change by degrees, and perhaps at the first the King had some nigh unto and about him did use the Impression of a Seal, which I am somewhat perfuaded to believe from a certain story which I have heard concerning Richard de Lucy, chief Justice of England, who in the time of H.2. isfaid to have chidden an ordinary man, because he had sealed a Deed with a private Seal, quant ceo pertain al Roy & Nobilite solement. In the days of Ed. 3. Sealing and Seals were very usual amongst all men, for proof whereof I need not produce any other testimony but the Deeds themselves, whereof almost every man hath some. But I must remember that Sir Ed. Coke in the first part of his Institutions, (f.7.a.) seemeth to overthrow the former opinions about the first using of Seals in England; The Sealing of Charters and Deeds (faith he) is much more ancient then some have imagined, for the Charter of King Edwin, Brother of King Edgar, bearing date Anno Dom 956 made of the Land called Jecklea in the Isle of Ely, was not onely fealed

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ed with his own Seal, (which appeareth by these words) Ego Edwindus gratia Lei totius Britannica telluris Rex meum donum proprio sigillo confirmavi; but also the Bishop of. Winchester put to his Seal, Ego Ælswimus. Winton. Ecclesia divinus speculator proprium sigillum impressi. And the Charter of King Offa, whereby he gave the Peter Pence, doth yet remain under Seal. The either of which two Charters are much more ancient then that of S. Ed. before mentioned: yet haply there may be some reason probably affirmed why as well King Edwin and the Bishop of Winchester, as Offa, who was King of Mercia about the year 783, did annex their Seals to their Charters, which no King of England or Nobleman did before or after them, (except S. Ed.) untill the coming in of the Conqueror, that ever I could learn, hear, or read of, in any Author. Nevertheless I must of necessity leave the search of such reason to others better studied in the Commentations and Alterations of Persons, Times, and Customs, then I my felf; however I never heard any one deny, but that the frequent use of sealing Deeds did commence in the time of Ed. 3. and was not ordinarily used amongst private men untill then, as hath been formerly touched.

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In this clause the Style of the King at large, the Year of his Reign, and the Year of our Lord God, according to the computation and account of the Church of England, together with the day of the Moneth, are expressed. In former times Deeds were often made without Date, and that of purpose, that they might be alledged within the time of Prescription, as Sir Ed. Coke in his said Book of Institutes (fol.6.) very worthily observes: and moreover, that the Date of Deeds was commonly added in the Reign of Ed.2. and Ed. 3. and fo ever fince, to whom I refer you, who in the place last quoted hath very excellent matter and observations thereabouts. And thus to perform what I promifed, I will fpeak a word or two concerning Livery of Seizin, and fo conclude.

Livery of Seizin.

Livery of Seizin is a Ceremony in Law used in the Conveyance of an Estate of Freehold at the least, in Lands and other things corporeal: but in a Lease for years, at will, &c. Livery of Seizin is not required, it be-

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ing onely a Chattel and no Freehold. By Livery of Seizin, the Feoffor doth declare his willingness to part with that whereof he makes the Livery, and the Feoffees acceptance thereof is thereby made known and manifest. The Author of the New Terms of the Law faith, that it was invented as an open and notorious thing, by means whereof the Common People might have knowledge of the passing or alteration of Estates from man to man, that thereby they might be the better able to try in whom the right and possession of Lands and Tenements were if they should be impannelled on Juries, or otherwise have to do concerning the same. The usual and common manner in these days of delivering of Seizin I know to be fo frequent, that of purpose I will omit it: but I pray you note with me before I make an end, that Livery of Seizin is of two forts, viz. Livery of Seizin in Deed, and Livery of Seizin in Law, which is fometimes termed Livery of Seizin within the view. Livery of Seizin within the view cannot be good or effectual except the Feoffce doth enter into the Lands,&c. whereof the Livery of Seizin was made unto him in the life time of the Feoffor. And it is not to be passed over in silence, that a Livery in Law may fometimes be perfcered.

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feeted by an Entry in Law; as if a man maketh a Deed of Feoffment, and delivers Seizin within the view, the Feoffee dares not enter for fear of death, but claims the fame, this shall vest the Freehold and Inheritance in him, to which effect you may fee the opinions of certain Justices, 38 Af. Pl. 23. upon a Verdict of Affize in the County of Dorc. And I conceive that this vefting of a new Estate in the faid case in the Feoffee, making his claim where he dares not enter, stands upon the same reason, for Contrariorum eadem estratio, that the revesting of an ancient Estate and Right in the Diffeizee doth by fuch claim, whereof you may read plentifully in Littleton his chap. of Continual Claim. It is worth the observation, that no man can constitute another to receive Livery for him within the view, nor yet to deliver (as I have heard my Master say) for none can take by force or virtue of a Livery in Law, but he that taketh the Freehold himself, & e contra. Otherwise it is to take and give Livery of Seizin in Deed, for there as well the Feoffee in the one case may ordain and make his Attorney or Attorneys in his name and stead to take Livery, as the Feosfor in the other case to give Livery; Concurrentibus iis que in jure requiruntur. And now let

let Delivery of the Deed to be added to the Sealing thereof, and the state executing of the Lands thereby conveyed, and then I prefume none will refuse to allow that every thing hath been named, which is effentially required to the perfection of a bare Deed of Feoffment; and although I have mentioned the Delivery of the Deed in the last place, yet it is not the least thing, or of the least consequence or moment, for after a Deed is fealed, if it be not delivered est a nul purpose, it is to no purpose, and the Delivery must be by the party himself, or his sufficient warrant. So it may be gathered from what hath been faid, that fealing of Deeds without Delivery is nothing, and that Delivery without Sealing will make no Deed, but that both Sealing and Delivery must concur and meet together to make perfect Deeds.

I hope such as are present at the Sealing and Delivering of Deeds of Feoffment, and the state executing thereupon, will not forget to subscribe their Names or Marks, as Witnesses thereof, whereby they may the better be enabled to remember what therein hath been done, if peradventure there shall be occasion to make use of them. And it is not amiss here before I end to observe, that

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al hough upon Deeds of Feoffment, &c. it was not usual before the later end of H.8. or thereabouts, to endorse or make mention upon fuch Deeds of the Sealing and Delivering of the Deeds, or state executing of the Lands, &c. intended thereby to be conveyed, (for I my felf have many Deeds of Feoffment which do testisse as much; yet it is to be credibly supposed, and not without some manifest probability, that such persons whose Names are inferted after a certain clause in fuch Deeds, beginning with his testibus, were Eyewitnesses of all. Thus desiring you to take notice, that I have called the faid fix parts of the Feoffment Formal, because they are not absolutely of the essence of Deeds, &c. manebo in hoc gyro, I will here conclude, requesting all those to whom any fight hereof shall or may happen to come, friendly to admonish me of my failings herein, whereby they shall ever engage me thankfully.

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